

WORKER ADVOCACY ADVISORY COMMITTEE

U.S. DEPARTMENT OF ENERGY

**PUBLIC MEETING
TRANSCRIPT**

**Loews L'Enfant Plaza Hotel - Washington, D.C.
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PROCEEDINGS

12:20 p.m.

Welcome and Introductions

MS. SPIELER: I'd like to welcome you all here to this second meeting of the Worker Advocacy Advisory Committee of the Department of Energy.

A few specific announcements, and then I'm going to ask that people introduce themselves and like last time, I'd like everyone in the room to introduce yourself and tell us your affiliation. We'll start with the people on the advisory committee and then move outward from there.

For those of you on the advisory committee, I've been instructed that every time you speak, you have to hit the button on the mike in front of you, so that the transcript can be made properly. So, we have a new system, and it apparently will work better, and -- well, actually before we go into any other business, why don't we start with the introductions and just go around the table?

As I said, my name is Emily Spieler. I'm chair of the committee. I'm from West Virginia University.

Ricky, do you want to start, and we'll go around the table?

MR. BLEA: My name is Rick Blea. I'm from New Mexico, and I represent Labor. I'm with the United Association of Plumbers and Pipefitters.

MS. CISCO: I'm Jeanne Cisco. I'm from PACE, Portsmouth, Ohio.

MR. BODEN: I'm Les Boden. I'm from the Boston University School of Public Health and also involved in the Medical Surveillance Program at the Nevada Test Site.

MS. HATFIELD: I'm Vikki Hatfield, and I'm from Knoxville, Tennessee, and I represent the communities involved in this procedure.

MR. ELISBURG: I'm Don Elisburg. I'm an attorney here in town, and I'm representing the Building Trades Department.

MR. SHOR: I'm Glenn Shor from the State of California, Division of Workers Compensation.

MR. ELLENBERGER: I'm Jim Ellenberger with the Safety and Health Department at the AFL-CIO. I'm taking a break from the ergonomics battle. Oh, it's over?

MS. RUDOLPH: I'm Linda Rudolph. I'm also with the California Division of Workers Compensation.

DR. WAGNER: I'm Greg Wagner. I'm a physician in Morgantown, West Virginia. I work for the National Institute for Occupational Safety and Health, but I do not represent NIOSH here.

MS. TAYLOR: Ditto here. I'm not representing the U.S. Chemical Safety and Hazard Investigation Board. My name is Andrea Taylor. I'm a member of the Board of the U.S. Chemical Safety and Hazard Investigation Board here in Washington, D.C., and I guess a government representative.

MR. MARKOWITZ: I'm Steve Markowitz. I'm an occupational medicine physician from Queens College City University of New York, and I worked in the former and current Medical Screening Program for Workers at Portsmouth, Paducah, Oak Ridge Gaseous Division Plants and Idaho National Labs.

MS. POST: I'm Iris Post. I'm the Iowa Workers Compensation Commissioner in the State of Iowa, and I'm representing a state agency.

MS. GANGI: I'm Claudia Gangi. I'm an attorney with the Department of Justice in the RECA Program, the Radiation Exposure Compensation Act Program.

MR. KATZ: I'm Ted Katz, and I'm also with the National Institute for Occupational Safety and Health. I am representing them here today.

MR. HALLMARK: And I'm Shelby Hallmark. Unfortunately perhaps representing the Department of Labor today.

DR. SELIGMAN: Emily, I'll start over here with the microphone. Paul Seligman, Acting Director, Office of Worker Advocacy, Department of Energy.

MR. EAGAN: Jeff Eagan, Office of Worker Advocacy.

MS. KEATING: Judy Keating, and I'm with the Office of Worker Advocacy, and I'm also the designated federal officer for this federal advisory committee meeting.

MR. OPPENHEIMER: I'm Alec Oppenheimer. I'm with the Department of Energy, Office of Information Management.

MS. ANDERS: Karoline Anders, Office of Worker Advocacy.

MR. OATES: I'm John Oates with the Department of Justice, with the Radiation Exposure Compensation Program, also.

MS. EPSTEIN: I'm Liz Epstein with the Department of Justice. I'm a paralegal with the RECA Program.

MS. LEDWIDGE: Lisa Ledwidge, Institute for Energy and Environmental Research.

MR. BUTCHER: I'm Martin Butcher with the Physicians for Social Responsibility.

MS. ATEWARI: I'm Jay Atewari with Physicians for Social Responsibility as well.

MR. MARTINEZ: I'm Len Martinez. I'm the Chief Financial Officer and Vice President of Administration for Kaiser-Hill.

MR. OLSON: My name is Mark Olson. I'm with the Idaho National Engineering Environmental Laboratory.

MR. TURCIC: Pete Turcic with the Director of the Energy Employees Compensation Task Force, Department of Labor.

MR. FALCO: I'm Joe Falco. I'm with the Office of Worker Advocacy.

MR. DETTLING: I'm Doug Dettling. I'm also with the Energy Employees Task Force with the Department of Labor.

MR. McCULLOUGH: Hello. I'm Tom McCullough. I work for SI International, and I'm a contractor here representing Department of Energy, Office of Environmental Safety and Health and the Office of Information Management. Thank you.

MR. CICHETTI: I'm Frank Cicchetti. I'm also a consultant, supporting the Office of Environmental Safety and Health and Information Management Group.

MS. GRIFFIN: Hi. I'm Judy Griffin. I'm from the DOE, Office of Information Management.

DR. MICHAELS: I'm David Michaels. I used to work for Department of Energy. I'm now at the George Washington University School of Public Health.

MS. ZACCHERO: I'm Mary Zacchero, Department of Energy, Office of Environment, Safety and Health.

MR. SILVERMAN: I'm Josh Silverman with the DOE, Office of Worker Advocacy.

MS. YOUNG: I'm Loretta Young with the Office of Environment, Safety and Health at the Department of Energy.

MS. RICHARDSON: I'm Renee Richardson, and I work with the Department of Energy, Office of Worker Advocacy, and I deal with the Hotline.

MS. KIMPAN: I'm Kate Kimpan. I'm with DOE's Office of Worker Advocacy.

MS. SPIELER: Well, I'd like to welcome everyone here, and I'd like -- there are several members of the advisory committee who are not present at this time.

John Burton has unfortunately informed us he will not be joining us for the advisory committee meeting, although he was available for subcommittee meeting by telephone and may be available episodically if we need him for subcommittee or other specific tasks.

Dr. Mueller from Colorado will be joining us tomorrow morning. She was unable to be here today, and I believe Dr. Welch will be joining us later.

Opening Remarks

MS. SPIELER: This committee, as you all know, is designed to assist and encourage the implementation of the law that was passed last year providing compensation to the employees of Energy, contractors for toxic exposure-caused diseases, particularly in state workers compensation programs but also with regard to the coordination of those programs with federal programs that have been mandated by that Act.

We met last time and formed several subcommittees, and those subcommittee areas will be the subject of much of our conversation later this afternoon and tomorrow morning.

I'd like to hold out the possibility that we may want to have some subcommittee breakout sessions tomorrow morning, either prior to 9:00 or as part of the morning time, and I leave that up to the committee as the afternoon progresses as to how we want to plan the time for tomorrow morning.

Today's agenda provides for a Public Comment Period at approximately 5:30. However, last time when we ran this meeting, we allowed for public participation in the discussion at the time that we were taking up issues, and to the extent that that continues to prove a viable option, I would like to continue to do that.

When we do that, and when we recognize people who aren't sitting at the table as committee members, I'd appreciate it if you would get the mike and identify who you are before you speak, so that we can tell on our record who it was who made the comment and just put up your hand, and to the extent possible, and time permitting, I will try to include you in the discussions that we have.

Our plans for today call for an initial presentation from Paul Seligman with regard to DOE Implementation and then a discussion about the inter-agency implementation of the bill, and then, subsequent to that, we will enter into a more -- more of a conversation about the implementation issues.

Before we move to that, I'd like to take care of some business, however. I would entertain a motion for adoption of the minutes from the prior meeting.

DR. WAGNER: So moved.

MR. BLEA: Second.

MS. SPIELER: All in favor?

(Chorus of ayes)

MS. SPIELER: Opposed?

(No response)

MS. SPIELER: Motion carries. Minutes have been adopted.

Well, actually, Paul, why don't we just go right ahead into your report, unless there are any particular logistical concerns that the committee members have?

(No response)

MS. SPIELER: Okay. Paul?

Update/Discussion

DR. SELIGMAN: Good afternoon. It's a pleasure to see all of you again, and again I'm part of the Department of Energy, and I'm part of the Office of Worker Advocacy.

I want to thank you all for your on-going willingness to participate in this very important endeavor.

We have one other piece of business that I do want to make the committee aware of, is that we have proffered the names of two additional members for this advisory committee, and those two individuals are awaiting the signature of the Secretary, and it is our hope that in any future meetings, that these -- we will -- our numbers will be expanded by two.

We've invited two individuals who are very senior and prominent members of our contractor operations at the Department of Energy, and we're looking forward to their participation and presence on the committee at large.

What I want to focus on today is what we've been doing in the last six weeks, since I took on the role as the acting director of the office, and talk about some of where our focus has been and where our efforts have been.

I'm not going to use this entire hour, not only because I -- in deference to the panelists who are with me from the other federal agencies but also because a lot of our initial efforts in this period have been to develop working relations with the HHS and Department of Labor and Department of Justice, to make sure that as we step out together to implement this program, that we're doing it in a coordinated and synchronized fashion, and that's extremely important, and we all recognize that from the get-go.

We have developed an implementation plan. We worked to develop a series of small issues papers and questions which hopefully form some of the basis for your thinking on the issues that were identified at the first meeting.

Let me just start with just a couple of words of background before I launch into my discussion of where we've been. This in many ways is for the benefit of some of the new members of the panel as well as some of those who are joining us in the office.

As most of you are aware, Title 36 of the Defense Authorization Act of 2001 established this Energy Employees Occupational Illness Compensation Program that will provide benefits to DOE contractor workers as a result of exposures from nuclear weapons production, and Subtitle D of that Act, entitled "Assistance in State Workers Compensation Proceedings", directed the Department of Energy to assist workers in filing compensation claims under their appropriate state compensation systems for work-related illnesses that are not covered by the program administered by the Department of Labor.

It calls for in that legislation the establishment of an advisory body, which this is the realization of, to provide advice to the Secretary regarding such an establishment of a program for workers assistance.

The legislation is specific. It asks us to establish procedures to submit applications for review and assistance. It asks us to review the evidence that is filed by or on behalf of a DOE employee, and that that illness or death may have been related to employment at DOE, and to submit that application to a physician panel to determine whether the illness or death arose out of or in the course of employment.

To assist such workers and employees in obtaining additional evidence within the Department of Energy's control that is relevant to that

physician panel deliberations and to assist the applicant to file a claim based on the outcome of that panel's review under the appropriate state compensation system.

On December 7th, the President signed an Executive Order further refining and defining our role. It asked us to work closely with the Secretary of HHS and their Advisory Board on Radiation Worker Health to assess all relevant records and information pertaining to worker exposures to radiation and to provide HHS and the Department of Labor any information relevant to claims made under this legislation and to, you know, identify and notify eligible individuals who might be eligible for this program and to designate qualified atomic weapons employers and beryllium vendors whose employees may be eligible for the program.

It also directed us to negotiate with states to provide assistance to DOE contractor employees, to establish this worker assistance program, and to report to Congress on an annual basis.

The legislation also called for the Administration to submit by March 15th of this year additional amendments or legislative language necessary to implement the program. Such legislation was prepared by the previous Administration and sent to the then President of the Senate and Speaker of the House on January 11th.

To my knowledge, those amendments have not been introduced nor am I aware at this point in time, unless some of the panelists have information to the contrary, that there are no such pending legislation on -- in Congress that's being considered.

I only mention this because it's certainly my impression and my intention that the legislation that we have at present and the Executive Order as it stands is the basis upon which we will be implementing the program.

That is certainly the direction that I am taking and the direction that I am giving my staff, and inasmuch as we can look toward the possibility of this program might be amended in the coming months, we will certainly do so, but our responsibility, I believe, is to take the legislation as it stands and to do our best to ensure that it is implemented both in the spirit and the letter to which it is intended.

We have in our office developed a draft implementation plan, which I just want to talk about briefly, that focuses on essentially eight elements, and I'll just discuss them a little bit and tell you where we are.

First, just to give you some idea of the interest in this program, we, as you know, have managed a hot line for a number of months now. As of our last report that Renee Richardson provided me, who's our director of our hot line, we have received 17,488 calls as of February 21st. That's the last report she gave me.

Of that number, we have either returned and/or completed questionnaires on 16,000 of those individuals. We have a backlog of about 1,400 individuals for whom we need yet to get in touch with.

We have been getting somewhere in the neighborhood of about 4 to 500 calls a week to our hot line, and our hot line staff, recognizing that it's often difficult to get in touch with people during the Monday through Friday federal working hours, are often in the office at night and on the weekends to try to reach individuals.

We have, I believe it is, somewhere in the neighborhood of 10,000+ unique individuals who are actually entered into our hot line database. We complete a short questionnaire form that not only gets their pertinent demographic information but a short work history, any information regarding their exposures as well as any information that would indicate whether they believe they have an illness that was related to their employment at the Department of Energy.

The eight elements that are part of our implementation plan include outreach, claims processing, physician panels, state agreements, contractor and insurer relations, management of the advisory panel, the facilities list, and performance measures and program evaluation. These are the eight elements that we are focusing on in implementing this program.

Let me talk about each one of these just briefly. We, and when I say we now, I'm talking about the we here at the table, the joint federal agencies, if

I may be so bold to speak for all of us, feel that outreach is probably one of the most important elements of this program.

This is a complex piece of legislation that divies up responsibilities amongst four agencies, that even in the best of hands is sometimes difficult to understand.

It's going to be critically important in the implementation of this program to ensure that potential claimants feel like they have a place to go that is readily accessible to them, that provides a face to the program, that answers their

questions about the way this program, the compensation program at large is organized, and gives them genuine assistance in helping them not only get claims forms and get information about the program but assists them in assuring that their claims are appropriately filed.

Similarly, because there is a great need to ensure that there is appropriate employment, job history, exposure and medical history information, we feel again as early in the process as possible, we need to engage Department of Energy contractors, our federal employees as well, to ensure that whatever records that are available are made available to help us assist and support an individual's claim, and to that degree, we have talked with our colleagues at the Department of Labor about jointly sponsoring outreach efforts at the very least around major sites and to talk about how we might reach out to other groups of workers, either at smaller facilities, at facilities that no longer exist, how we can reach out to workers who are not Department of Energy contractor workers but work for our beryllium vendors and work for the atomic weapons employers.

Many of our planning efforts are embryonic at this point, and we certainly look to you and to this committee to help us, to guide us in giving us advice as to how best to establish such an outreach effort.

Similarly, the second element has to do with claims processing, and again as an outreach, this is a critical element to the success of the program, not only to ensure that the submissions of claims is done in an efficient and effective manner but that it be done in a manner that's viewed as worker friendly, and again we are committed to working closely with our colleagues, not only at the Department of Labor but also at the Department of Justice, which manages the RECA Program, again to ensure that the claims process is seamless and done in a fashion that ensures that an individual isn't pingponged between agencies or is confused about where it is they should be going in this particular process.

The third element is physician panels. Again, we are very early in our thinking as to how to establish and manage these panels, and we'll look closely to the subcommittee to give us guidance on how best to manage these panels, and NIOSH has certainly indicated to us their readiness and willingness to provide us names and guidance on who should staff these panels, as soon as we can tell them the location of the panels, how many, what kinds of physicians we need.

Similarly, we are also again early in our thinking about how best to not only structure these panels and the location of the panels but also how -- you know, the guidelines and decision logic, if you will, that will be used by these panelists to make decisions.

The fourth area is state agreements. Again, we are early in our discussions with some of the states regarding the elements that should go into a state agreement, and we will be, over these next coming weeks, talking to the appropriate compensation personnel at some of our major states to at least begin to decide how to structure the agreements that are required in the legislation.

On the area of contractor and insurer relations, as part of your package, you'll notice the Field Management Council action, which was completed in January, I believe it was either 18th or 19th, and has now been sent out to the field, which calls upon DOE contractors to ensure acceptance of valid workers compensation claims for work-related illnesses, and we will be working closely with our contractors to ensure implementation of that.

As you can imagine, there are lots of questions about what it means, what it means to -- what the term "valid workers compensation claims" mean, what it means in terms of what contractors should be doing differently than what they're doing now.

We have -- part of that notice asks each contractor to identify a point of contact, and we're actively developing a panel of contacts within both our contractor workforce as well as at the federal level with our operations and field folks, that we can begin to not only discuss some of these issues around the acceptance of valid claims but also in the management and implementation of this program.

The sixth element is the advisory panel. I don't need to discuss that. You're here. I hope things are working well.

The seventh issue is the facilities list. As part of your package, you'll note a copy of the Federal Register notice that was published, naming, I guess, about 317 some odd DOE facilities, beryllium vendors and atomic weapons employers that was made public in mid-January.

We are working now to update this current list of facilities. Our plan is to have an update of this list hopefully ready for publication in June of this year. It means for those facilities that are listed in the Federal Register, getting more information about the periods of time that they worked for the Department of Energy, the nature of the work, the kinds of materials that they handled, so that we can create a public use database that will be of hopefully value not only to workers but also to the agencies that manage these claims.

Similarly, there were many companies that have been identified that did not make that list that was published in January, and we have a small staff

that are doing additional research to determine as best we can whether indeed these employers do qualify as either beryllium vendors or atomic weapons employers, and, finally, we are doing some additional archival and research with some of the DOE records that are out in the field to determine again whether there are additional companies and additional records that would justify inclusion of other companies on this list.

We want to try to do as much of this as we can in these next months, leading up to July, primarily because we do feel that once this program is up and running, that people are filing claims, that we will have -- be taking on an additional, you know, archival and support effort to deal with individual claimants who feel that they did work for the Department of Energy or on materials that were supplied to the Department of Energy, and who either are not on the list, and, so, we will -- we need to have an on-going presence.

Finally, the last element, of course, is performance measures and program evaluation, and again we will -- we developed some initial ideas as to how to approach developing both these measures and a process for evaluation, and again we'll look to our subcommittee to give us some guidance on how to best address these issues.

So, that's all I have to say in a nutshell. I'm happy to answer any questions, take any comments that you have.

Emily, it's yours.

MS. SPIELER: Yes. Let me just suggest that perhaps what would make sense, since your areas of work clearly coincide with the areas that we identified and have subcommittees set up for, that we -- that you take some questions now, but that we save substantive discussion of each of these areas for after the inter-agency presentation, and then that we work carefully through each of the areas in terms of what we can do to be of assistance to you in moving forward.

Does that make sense to you, Paul?

DR. SELIGMAN: Yes, it does.

MS. SPIELER: Okay. And let me just make sure that the record also reflects that Dr. Welch has joined us. Welcome.

So, questions for Dr. Seligman?

MR. MARKOWITZ: The Senate memo, this item included in our packet, notice, I guess, DOE 350.6, it says, "Completion of these revisions is scheduled for March 31st, 2001."

That means that effective that date, this will apply?

DR. SELIGMAN: That's correct.

MR. MARKOWITZ: Okay. Thank you.

MR. ELISBURG: Paul, is it the position of the Department of Energy, does the Department of Energy have a position, whether or not the January submission to Congress in terms of legislative recommendations constitutes compliance with the statute or are you still -- is that still a requirement?

DR. SELIGMAN: I don't believe the department has a position in that regard.

MR. ELISBURG: I'm encouraged. I don't know. It said, "The President shall submit", and the President submitted. So, I don't know what happens after that or does that automatically get recycled with the new President?

DR. SELIGMAN: I don't know the answer to that.

DR. WAGNER: It sounds like you've done a lot of good work in building bridges between the necessary agencies that you'll be working with.

I'm curious whether you've had an opportunity to draw out your anticipated process from the point of outreach or identification of people who may be eligible, all the way through to be able to understand the program that you're building?

DR. SELIGMAN: We have in our minds but not formally on paper yet. I think it's, as I indicated, clear to all of us that there needs to be a prominent field presence in this program and a large effort devoted toward assisting workers in the field, and that clearly there's going to need to be, because there are at least three potential places where a claim could ultimately end up, clearly some effort to ensure that the claimant ends up at one or two or even three of these particular places. I'm talking now about Labor, Department of Energy or Department of Justice.

We do, I think, feel that there needs to be a single simplified claims process to the degree that there can be. I mean, there are some -- you know, the Radiation Exposure Compensation Act Program has been in existence for a long time. We're not taking over that process. We do need to figure out how to integrate this additional requirement that provides an additional benefit to uranium millers and miners, and that has yet to be determined.

But we spent, I think, more time just talking with each other and trying to sort of flesh out the complexity of this program before we actually begin to put pen to paper about the drawing of the process, though I anticipate that in the coming weeks, we will have made a lot of progress. We'll be, you know, capable of doing that.

You do have to appreciate that we're not only talking here about in Department of Energy workers, but we're also talking about individuals for whom we actually have very little knowledge -- well, some for whom we have more knowledge for the beryllium vendor workforce, but for some who we have very little knowledge as to who they are or how many they are or where they are or how they may ultimately end up in the system, and clearly, despite our efforts at outreach and having a field presence, there's still going to be many not only workers but surviving spouses who will be interested in making claims for benefits under this program who are no where near any of our outreach efforts, and we'll need to have other mechanisms for them to feel like they can get both information and get access to this program.

MS. SPIELER: Jim, I think you had your hand up.

MR. ELLENBERGER: Paul, I want to add my thanks to you and your staff for the work that you're doing to get this element of the law up and running and for that, we are grateful, and I know that you've devoted a lot of energy and effort and attention to the outreach effort.

My question has to do more specifically with sort of time lines, and it's always dangerous to talk about time lines. The law itself specifically requires that certain things happen at certain time -- within certain time frames, and on the 120th day after the Act was signed into law, I called HHS and asked them where the press conference was going to be for the announcement of the Advisory Committee on Worker Health and on Radiation and Worker Health, and it hasn't even left HHS to go to the President's office for appointment.

So, it's a little dangerous to talk about time lines, but I'm really curious as to what you see in terms of realistic and achievable steps in terms of outreach prior to July 31st.

DR. SELIGMAN: I think it's entirely reasonable to expect that we will be able between now and then to have outreach offices and personnel and staff hired to perform this function in the field and people who are trained to perform that function.

We've got -- I refrained from counting the months and days, but we have five full months now to -- in order to achieve that, and I think we can, primarily because we all are in agreement that this is an important step to take, and we're really now beginning to really focus more on the details, such as where should we have, you know, freestanding outreach programs, how should they be staffed, how should they be trained.

So, we're down starting not only to sort of talk about the implementation of those, and I think that's a good sign that indeed we'll be able to be there and be present when the July 31st date tolls.

MS. TAYLOR: I want to follow up on the outreach question. As I looked at the Federal Register notice that was announced in January 17th for the facilities location, at the top of the list is my hometown for atomic weapons. It's a small town of 14,000, Sylacauga, Alabama, and the question that I have is, how, from this Federal Register, do people in my hometown know that they can apply for workers comp, if they were exposed, unless I call them up and say, hey, did you know this existed or did you work at such and such facility, which I actually don't know which facility it could have been.

DR. SELIGMAN: That's a very good question. To date, the -- a variety of local newspapers have, you know, picked up on the Associated Press story and have actually picked up on this list and have run articles in local newspapers about this list, and it has for our hot line resulted in sporadic pockets of calls from different communities in response to those articles.

We do recognize not only the need to reach out to employees at these particular facilities but also to reach out to the employers as well. We've received a view letters from, you know, vice presidents and managers of companies who had no notion that their company may have been involved in some aspect of this work 30-40-50-60 years ago and some of them back in the 1940s, and, so, we have a need to educate on both sides, and again that's something we're going to talk about as to how to best reach out to both the employers and the employees of those companies listed on the -- in that notice.

MS. TAYLOR: The Southern Research Institute is actually located -- their principal office is in Birmingham, Alabama, --

DR. SELIGMAN: Right.

MS. TAYLOR: -- which is not in my hometown. That's kind of curious of how do you get to these small areas or pockets.

DR. SELIGMAN: And again, we'll be interested, of course, in any advice that you have or guidance. Some of the names that are on there are also names of big universities, too, and, you know, it's certainly not our intent to inform anyone who's ever been employed by Columbia University that they were, you know, an atomic weapons employee.

MS. RUDOLPH: You mentioned that some people that are already getting compensated through RECA, for example, now may be eligible for additional benefits under this program.

Will you be proactively notifying all of the people that have gotten RECA benefits that they may be eligible for additional benefits?

DR. SELIGMAN: Claudia will take that.

MS. GANGI: That will be our task. We've been specifically tasked with identification and notification of those miners and the transporters who qualify for compensation under RECA who are eligible for the additional benefits under the new Energy Program.

We are putting a process in place as we speak to accomplish that task.

DR. WAGNER: Now, it seems to me that if you're gearing up outreach, you clearly need to have a program to funnel people into, and that it's -- I'm not sure that outreach is what I would put at the top of the list.

I really do think that designing and implementing the program, so that you have something for people, and speaking of that, you know, there's -- at least certain parts of the government are under a hiring freeze right now, and I was curious whether the freeze of hiring at certain levels in the government is having any impact on your ability to mobilize and design, develop and implement this program.

DR. SELIGMAN: I'll let the other agencies speak for themselves. It's -- other than our inability to hire a director for this program at the moment,

which I'm eagerly anticipating, there is -- we've been able, using, you know, staff resources within the Department of Energy, to identify and mobilize individuals to work on the implementation of this. So, it has not been a problem for us.

Do you want to comment?

DR. WAGNER: Well, I was going to say as you try to develop the field capabilities that you were talking about, do you see this as being a problem?

DR. SELIGMAN: No, I don't, primarily because to a large extent, we will -- given the nature of this work and the fact that we'll be needing a fair degree of flexibility, we will probably be using contractors or others to conduct this work. So, it doesn't -- the federal hiring freeze doesn't -- wouldn't impede us in that regard.

Shelby, did you want to comment about federal hiring?

MR. HALLMARK: It might be helpful just to hold those kinds of issues and do the Labor Department all as one piece, because obviously there are - - certainly I will touch on that, along with a bunch of other issues, but I don't want to ruin my jokes.

MS. SPIELER: Okay. We'll save the Labor Department and the Department of Justice for the next section of the agenda.

Iris?

MS. POST: I just have kind of a question. On your outreach, are you -- I know I didn't understand from what -- when you had talked about implementation. Is the outreach basically to that piece of -- you're talking about claimant identification and assistance kind of piece?

DR. SELIGMAN: Yes.

MS. POST: Okay. My particular division in Workers Compensation is part of a larger department, Department of Workforce Development, which is part of the Department of Labor, which I know we'll get to later, but have you considered or is it a consideration using some of the facilities that already exist --

DR. SELIGMAN: Yes.

MS. POST: -- in respective states?

DR. SELIGMAN: Absolutely. Yeah. We've talked about a variety of approaches to reach different populations and different groups and to use existing resources.

MS. POST: And as a taxpayer, I always get really nervous when a large department's talking about setting up something new because when you already have expertise and facilities available, you know, it's great if you can keep, you know, using the same facilities where there may already be people and sites.

DR. SELIGMAN: I agree entirely, and we will do that to the greatest extent possible, but we also recognize that there are many individuals out there who may not have existing relationships with some of those programs, who, you know, for their personal comfort level, feel like there needs to be an alternate approach to making contact and getting information and getting into the system. So, to the extent that we can use existing resources, we certainly will.

MS. RUDOLPH: Will you be making the contact list with contractors available to the relevant state agencies? You said you were developing a list of contacts for each of the contractors.

DR. SELIGMAN: Yes. Sure. That's not a problem.

MS. SPIELER: You indicated that you were talking to us from an implementation plan. As the department is developing those implementation plans, would it be possible to share them with the members of the advisory committee?

DR. SELIGMAN: From the Department of Energy point of view, yes. That's not a problem.

MS. SPIELER: Because I think that would be very helpful to us in terms of our sort of assistance to you on any of these what will be, I think, fairly difficult issues that I know you're struggling with and have been working really hard on.

Other questions from the committee?

(No response)

MS. SPIELER: When you're talking -- I have one other. When you're talking about contractors, we have kind of two different tiers almost of contractors now, the rather -- the large ones and then this rather long list from

January 17th of these situations where we aren't exactly sure or even they may not be exactly sure what it is that you've identified.

When we get to the discussion about the relations with contractors and insurers, I just want to make sure we don't lose this issue because I'd like to know about sort of indemnification arrangements with contractors, if they exist, what the expectations are with regard to these smaller facilities and these old claims, and I certainly don't have clarity on that, and I don't -- what I'd like to do is save that and discuss that as part of that discussion later.

Are there questions from the floor for Dr. Seligman? Anyone or anyone from the Department of Energy who wants to add something? I assume you don't mind, Paul. I don't.

DR. SELIGMAN: None of my staff have walked out yet.

MS. SPIELER: Right, right. No. It does seem like an energetic and sort of joint effort that you're engaged in with perhaps -- I'm impressed that you don't think you have a shortage of staff, but I really do -- I am delighted at how you're moving forward on these issues.

So, if we don't have other questions about that -- I'm sorry. Go ahead.

MR. SHOR: Dr. Seligman, you mentioned that there have been about 17,000 contacts to the program already. Has that come from any existing outreach effort or is that -- that's just by word of mouth and --

DR. SELIGMAN: Well, it comes from a variety of things. There was a series of public meetings that were held previously, and there were many calls that came into the hot line as a result of these public meetings which were, I think, a form of outreach.

But many of them do come from just coverage in the media of the compensation legislation or various announcements that have occurred over the past year as the Administration bills were rolled out, as Congress took action, Executive Orders were issued. So, there have been a host of articles in the national press that were picked up by the local press that probably accounted for the bulk of these calls as well as these public meetings.

DR. WAGNER: So, what exactly are you telling people who call up and say I've worked at a facility or, you know, my dead spouse worked at a facility, had toxic exposures and developed a disease, what should I do?

DR. SELIGMAN: We ask them if they wouldn't mind answering some questions about the program, and we tell them that -- about the fact that the program is in its implementation stages.

We have actually this week sent out a mailing to 10,000 individuals with a letter from myself explaining where we are in the program, talking about the implementation date of July 31st, along with a sort of two-pager describing sort of the basic elements of the legislation.

But we try as best as we can to counsel patience and get information, you know, information essential to being able to maintain contact with folks, and information as well that will help us to, you know, prioritize some of our outreach efforts as well, since we know, for example, that, you know, over 60 percent of our calls are coming from the major facilities. So, it directs us to certain areas about where we will hopefully devote other resources and reaching out and contacting people.

MR. SHOR: Would it be possible for us to get copies of the letter that went out?

DR. SELIGMAN: Sure.

MR. SHOR: Thank you.

MS. SPIELER: To kind of follow up a little on questions that Greg is asking, it sounds a little scary to me. You're going to have 10,000 or however many more backlogged claims at the point we move into implementation of this program. That's essentially right.

I mean, these are people who've contacted you and may or may not have legitimate claims under either the DOE advocacy piece or the beryllium/uranium, you know, the DOL pieces, and those people are going to need to be put into whatever the entry point is that's finally developed fairly quickly this summer, and you're going to start to need to process what you have, right?

Am I getting this wrong or right here?

DR. SELIGMAN: So far so good.

MS. SPIELER: So, however many more you have, you're going to have 10,000+ people already kind of standing in the queue at the point at which you go into full implementation, and, so, I -- clearly, although the Worker Notification piece is critical, this other sort of claims processing and state agency

relations pieces that are absolutely essential for actually doing something, getting that first person in the front of the queue through the system need to be in place rather quickly.

DR. SELIGMAN: That's correct.

MS. SPIELER: And we should spend some more time, I think, as we go through the afternoon talking about those pieces.

MR. BLEA: Just for clarity, while we're sitting on these outreach facilities, we will have DOE and DOL there as well, correct, together?

DR. SELIGMAN: We think that any outreach effort needs to be coordinated between our agencies.

MR. BLEA: And the reason being just what you're saying there, for their questions and DOL and DOE and the forms. It'll be a much quicker process and a much smoother process, and the individuals will be able to get help from either agency in order to get this done, is that correct?

DR. SELIGMAN: That's correct. I mean, other than that, I don't necessarily view it as getting help from either agency. I think we're looking for, you know, making sure that the assistance provided in the field helps people make decisions about programs that they're eligible and where they should be applying.

MR. BLEA: Would it be fair to say that an individual coming in to one of these outreach programs or offices, that DOE would be able to help these individuals go to the site and get their medical records, to help them process this, or are they going to direct them?

DR. SELIGMAN: I don't envision sending anybody to the site to get those records. I envision having our field -- the individuals who are working in the field make those contacts and assist in getting those records themselves.

I would like to develop the kind of relationship that identifies points of contact within our contractor and in our federal operations facilities, so that we can -- we, meaning the Department of Energy, can get the necessary records for that individual to support their claim.

The last thing we want is to be directing people downtown to our Oak Ridge Operations Office or to the managers or presidents who run our contractors on an individual basis for those records. We should work to, you know, do that, you know, -- we should take that, make that effort for them.

MR. ELISBURG: Paul, are you treating these 17,000 calls as -- any of them as people filing claims with you or simply requests for information or are you making clear that when they call, this is or is not a claim?

DR. SELIGMAN: We're making clear that it's not a claim. All we are doing is collecting information, that the process is not up and running.

Now, you do raise a very important point, which is, irrespective of what we tell them, we know for a fact that many do believe that as a result of having made this call and made this contact and having filled out a questionnaire over the phone, that indeed they have taken the first step towards making a claim.

I don't know what more we can do about it, other than to try to be as forthright and, you know, consistent about the message that we deliver, but I do know for a fact, having talked with some of these folks, that there will clearly be misunderstandings about what it is they've actually done in this encounter.

MR. ELISBURG: Well, it will be important fairly soon that you spell out what is or isn't a filing of a claim because I presume at some point, not just with the statute but with your procedures, times are going to begin to run, etc., etc., etc. I think we have to be very concerned about that.

DR. SELIGMAN: Absolutely, and I think Shelby will probably address that as well because there are some things that begin to toll as when that "claim" is filed or when that process begins.

MS. CISCO: Yes. Could we have a copy of that questionnaire?

DR. SELIGMAN: Sure.

MS. CISCO: And one more thing.

DR. SELIGMAN: Yes?

MS. CISCO: Are you planning to contact those 17,000 once this is set up?

DR. SELIGMAN: Yes.

MS. CISCO: Is there a method to do that?

DR. SELIGMAN: Again, you know, we -- in -- we are able to get out letters fairly quickly, and, so, similar to the mailing we had this past week, just providing a status of the program.

Our plan is between now and July, to have another update mailing, if you will, because we feel we've got to do that probably at least every couple of months at the minimum, and again our plan is once there is, you know, a program to be announced, and, you know, phone numbers or addresses or places to call, we will again use our -- that mailing list as a way of reaching out and contacting people.

MS. SPIELER: I'd just like to ask you one quick follow up on that. People are also going to be filing with state agencies as well as with the federal agencies we've been talking about.

Are people being told when they call that they may have a state claim that ought to be filed? Because we may not be able to control tolling of statutes at the state level, and it seems that we need to come back to this when we talk about state relations issues because I -- it concerns me if people are calling the 800 number with the -- and coming away with the impression that they've somehow put their finger in the time dike, and they aren't at the state level.

So, I -- again, another issue that I'd like to come back to when we talk more specifically about the substantive questions.

Les, you had a question?

MR. BODEN: Yes. This really goes back to the point that Emily raised, which I -- the more I thought about it, the more potential danger I saw, and that is, this is likely to be a program that has a time profile on filing, which has a lot of stuff coming in in the beginning, and therefore has the potential of being from any point of view of being effective in delivering what it's promising of failing by virtue of the fact that it can't process as many claims as are coming in in a reasonable period of time, and there may be a number of reasons for that.

But -- and maybe you've done this already, Paul, but it might be worth thinking about where the bottlenecks are likely to be. The medical panels are the first thing that come to mind for me, as a potential, you know, if -- let's say there were 5,000 claims, I mean, you know, which may be high anyhow, but if there were, and you had to have medical panels in position to process -- first of all, you had to get the information to them and process them, you know.

I think you're talking about -- I don't know if it's, you know, decades, centuries. I don't know what the right time line is, but it just worries me a lot that this kind of a time profile of claiming, where half your claims might come in in the first month, might just lead to sort of an automatic failure in the system, and I wonder if there isn't some way that we can be helpful to you in thinking about how to avoid that problem.

MS. SPIELER: Paul, I assume you're going to join us for the rest of the afternoon, so we can --

DR. SELIGMAN: Oh, yes.

MS. SPIELER: Okay.

DR. SELIGMAN: Les is absolutely right. I don't have a response, other than we --

MS. SPIELER: Right.

DR. SELIGMAN: -- know that as any new program, there is certainly a wave at the beginning, and one needs to, you know, plan carefully as to how to deal with that, so that, you know, by the mere success of having reached out and touched so many people, that we fail as a result.

MR. BODEN: A wave and maybe an undertow following the wave.

MS. SPIELER: And I think that may have been in part the concern of some of the other questions with regard to not focusing 90 percent of your efforts on outreach and service, and in terms of the balance of how we do this, the early questions, I think, led to a sense that an enormous amount of effort was being put into the outreach effort, and I'm just saying I think that my guess is that not what's going on, but that we need to be clear about that as we kind of move through these issues, that the problems of bottlenecks are a huge concern.

DR. SELIGMAN: I didn't want to give the misimpression that somehow this -- the sole focus of this program is outreach, but simply to recognize that the importance of the first encounter that individuals have with this program is going to be extremely important, not only in dealing with, you know, the large number of potential individuals who will be interested in this because, you know, if in any way we can ensure that those who are most needy and most deserving get, you know, pushed to the front of the queue, outreach is going to be extremely important in helping us make that determination.

So, I only emphasize it because there's just a lot of important things that occur at that particular interaction that need to be focused on it, and it has to be an important piece, but by no means are any of these other pieces any less important in implementing the program.

MR. BLEA: Emily, I believe we have a subcommittee that's addressing this issue, is that correct?

MS. SPIELER: Yes, and we're going to come back to --

MR. BLEA: And, so, I --

MS. SPIELER: -- these issues in greater depth one at a time after we hear the next presentation.

MR. BLEA: So, I think when the subcommittee reports on that, I guess maybe that will help Paul or all of us look at this, but I'm glad that we do have a subcommittee on that.

MS. SPIELER: Yes. Thank you.

MS. POST: Have you considered at all these phone calls actually doing -- being the trigger for making a claim or somehow that -- I know you have a web site, that somehow you could have information available or actually a claim people can fill out on the computer via the Internet and send it in, that actually that is the trigger for establishing claims.

DR. SELIGMAN: Something to consider, yes. I have not, to be honest with you, personally considered that, but --

MS. TAYLOR: Again, it goes back to what the subcommittees have already basically focused on our previous meetings regarding the whole idea of claims filing and outreach and the forms. I mean, that's important. I don't think the form is being developed right now.

MS. SPIELER: Yeah. Why don't we try then to come back to this after the presentations?

MS. TAYLOR: Sure.

MS. SPIELER: Steve?

MR. MARKOWITZ: The people have the greatest stake in whatever's set up are obviously the workers who are ill. I'm wondering what the plans, what you're thinking is about how to institutionalize worker participation in the program, not merely recipients of this entitlement but actually people who are actively working on behalf of themselves and their co-workers or former co-workers to make the program a success.

DR. SELIGMAN: I think that goes to the heart of how do we establish these outreach programs and how they're staffed, and again I think that these are things/issues that we discussed at the subcommittee meetings this morning, and I would certainly -- I think I'll defer to the discussion this afternoon, but you're absolutely right.

Again, any initial contact or outreach process clearly needs to be sensitive to the workers and be done by individuals who can be sensitive to their needs.

MS. SPIELER: Any additional questions?

MR. BODEN: Just one very brief thing. As I was thinking about when we had our subcommittee meetings this morning, it would be quite useful, I think, to share minutes or stuff of the subcommittee meetings among those subcommittees, because all the stuff is so intertwined. So, if that could also be part of the process, I think that would be good.

MS. SPIELER: Were there any other questions for Paul?

(No response)

MS. SPIELER: Thank you very much. I assume we'll have a fairly vigorous give and take on some of these issues in a little while.

DR. SELIGMAN: I'm anticipating them.

MS. SPIELER: Thank you very much. Ted, Claudia, Shelby, the floor is yours for discussion of the inter-agency work.

Status of Interagency Work

MR. HALLMARK: Just the decision process as to who goes first will indicate the degree of complexity of this program.

We are at the Department of Labor very glad to be able to participate today with this group as we participated and came and visited with you in the first meeting and want to stay close.

This entity is the first of at least two panels that are going to be in the field, and we know there's a request that's pending at the department for another committee to be created like this, which is being considered now at the Department of Labor.

In any case, whatever the panel is, we want to get as much input from people who are interested in and knowledgeable about the program as we can. So, it's a pleasure to be here and to be able to participate.

We would like to borrow what we can informationwise from this group. The first big problem we have is trying to figure out what to call this program. Emily was stumbling over it earlier. So, if you can -- if you -- one of the things you could do is come up with a nickname, we'd appreciate it. EEOICPA is not particularly -- is not very -- you know, doesn't slip right off the tongue, and EROICA, which I think was David Michaels' first idea, got canceled for political reasons. I'm not sure why.

(Laughter)

MR. HALLMARK: But it is a problem, and we'd like to have a name for it. So, if folks could think about that, we'd appreciate it. Whatever it's called, it's of great interest. The program is going to affect many, many -- tens of thousands of people in the next several years, and we need, as the discussion has

already revealed, we need to work very closely among the agencies that are represented at the end of the table here together to make it work.

It is a very intricate and complex process, and it's one that is going to take a lot of thought. Don Elisburg raised an issue this morning which needs to be, I think, addressed immediately as far as the Department of Labor's concerned, and that is the fact that we have had a change of Administration since you met last.

We have a process now going on, much abbreviated as a result of the rather unique circumstances of the election and the Florida situation, of transition, and the transition is one that is going to take some time.

So, one of the things that you're going to hear, you've already heard a little of it from Paul, you'll hear more of it, I'm sure, from my colleagues on the right here, I don't mean that in a ideological fashion, but we are still struggling. We don't have assistant secretaries. We don't have a deputy secretary of the Department of Labor.

We are in a process where obtaining a decision is complicated, as is OMB and, for that matter, the White House. So, one of the issues that needs to be addressed is what is the Administration's position with respect to the amendments proposed on January 11th? There is no -- to my knowledge, there is no position at any of the departments or at the Administration on that score, but there needs to be one, at least in my view, as a person who's been working on this for a couple of years.

Likewise, that raises issues about how we can proceed down the line to establish the program that will be the recipient of the wonderful outreach that we've just been talking about.

Now, obviously the outreach needed to be talked about early on because we need to do it early on, but in fact we need to be prepared, and I'm glad to know that you're now sharing the anxieties about how this program is going to function that I've been working on and dealing with Dr. Michaels for a good long time.

I think the Department of Labor's piece of this is a very large piece, but I'm not sure it's not smaller than what DOE has to do or what HHS has to do. So, there is a tremendous amount of work to be done for all to make this happen, and especially to make it happen within the accelerated time frames that have been established for us by Congress and by the Executive Order.

All that said, we are forging ahead at the Department of Labor. We have a development plan, implementation plan similar, I think, in structure to the

one that Paul has outlined for DOE, to do the many separate tasks that we have to do to accomplish our piece of the program as it's currently established.

We have, to answer the question that was raised, I believe, by Greg, we have an exception from the hiring freeze, and I believe it was Exception Number 1 rendered by Secretary Chao for this task force, which has about 20

people now working at the Department of Labor full-time and contractors to do all the many steps that need to be done. That's the good news.

The other part of the news is that it takes a long time to do these tasks. We have time lines set up. We're working very hard to establish -- to move the milestones back to make it happen within the time frames.

If you read the Executive Order, you know that the regulations are the sort of critical path of this process because they must be delivered by May 31st in order to allow the 60-day notice period, so that the program could be implemented on July 31st. That will require that the Department of Labor and HHS, I don't think DOJ's doing regulations, I don't believe that's a necessity, but certainly HHS and DOE and Labor are, and that means that we have to have packages to OMB last month.

We don't have packages to OMB, and obviously, as I've just described to you, I have -- I'm still trying to figure out and work through the process of identifying who in the Department of Labor will be the clearance processes for our own internal discussion.

So, if you can take from that, and that is perhaps the most difficult piece as far as the six or eight different components of the work that would have to be done, but you can take from that the fact that while we are working as hard as we possibly can, Jim's question about the concern about the time lines is a very, very real one here at this juncture, and I can only give you the commitment.

I'm only entitled, I guess, given the fact that I've just made a whole series of caveats about clearance, I can only give you the commitment of the career people, who are involved in this and have been involved, that we are going to continue to work as hard as it's possible for us to do to accomplish what we can do to keep this in the pipeline, to meet the time frames that are anticipated.

I think this committee and others can help the Administration try to figure out how to do this work. There are continuing issues, inter-governmental issues, that have to be resolved in terms of the flow chart. Greg also mentioned the question of, well, have you looked at the plan? Have you looked at how the program works, and how people will flow through it?

Well, we've tried to do that, and we had some preliminary notions, but there are some differences of opinion, and that's absolutely to be expected, given the complexity of the statute that we have. We have a statute that was established in October that basically set up a default program and then asked the

President, which has changed, to say what the rest of the program should look like and to fill in blanks.

The previous Administration filled in some of those blanks with an Executive Order. There are -- there's a whole set of issues that have swirled around and been discussed at some length about how Department of Labor, and I assume the other agencies, are thinking about this issue. How we'll do regulations with respect to what we -- what I refer to as the default program, that which goes into effect, if there are no amendments, and then how that will bleed into or lead into a new and complete program as laid out by whatever further legislation is required. That alone introduces a whole series of questions and ambiguities.

We are going to work our way through those, and we're going to come up with regulations. In fact, we have already within our own councils developed the first cut at a set of regulations, but I guess what I'm trying to do here is to provide you a complete idea of the notion to which we're working hard, but we face a number of challenges.

We will be meeting, and we'll be -- whatever happens with respect to the Department of Labor on the federal advisory committee request that's been made, we'll be asking for input and trying to get help in trying to answer some of those questions from some of those of you who are here and anyone else who wants to participate.

Just a few other things about the process. We are working on forms right now. We have a first very preliminary cut at forms that will be used for the Department of Labor portion of this activity.

If I can speak a little bit to one of the questions that was made earlier, also, it's our interpretation of the EEOICPA statute as it stands that claims cannot be filed under our portion of the bill until July 31st. So, that which has or hasn't been done in the context of the telephone system can't constitute a claim for benefits.

We are working to make sure that whatever -- that the regulations and procedures we use are extremely explicit, so that everyone knows exactly what constitutes claim filing, and our hope will be to try to make it as worker friendly as possible, i.e. that we'll take the earliest date among possibilities. Those are kinds of issues that we're grappling with now, and -- but I think they are soluble.

We're currently developing fiscal systems. We're setting up -- we have accounts in Treasury set up to do the payment of benefits. We're working on

our administrative adjudicatory procedures, most of which are being borrowed from either our Black Lung experience or our Federal Workers Compensation experience, but in any case, we are -- we have people who are busy right now developing those very detailed procedural step-by-step instructions from which we will develop training for staff and move forward with the full-fledged program.

We're not leaving outreach on the side at our part of the process either. We're working closely with Department of Energy, and I do hope, in answer to your question earlier, that we will be able to have a concurrent outreach process so that we have staff and probably will be contractor staff, given the time frames that we need, sitting in the same location at the major DOE sites and working on the diaspora of the other sites, so that we have one source of information trying to help people maneuver through this multi-threaded set of possibilities that faces them.

I think that's really critical. I don't think we want to be in a posture where there's dueling information sources or one entity says, well, we can tell you about our program, but then you need to go over to office X to find out about what they do because we don't have any control over that. We will work hard to avoid that kind of buck-passing.

We have a project right now to establish a toll-free 800 number of our own. We're building that. We have a contract that's in place at the Department of Labor we're going to try to ride on, so we hope to have something in the next several months that will be a preliminary process that will allow people to at least call in and find out general information about how the Department of Labor's portion will work, and we expect by August 1st to have a much more dense system that people can call in to and get precise information about how to proceed with filing their claim.

We'll have a web page that's underway right now, which we hope to have up and running fairly shortly and certainly by the summer, and as I said earlier, we're working on probably contractual arrangements to place folks out in the major sites to basically assist directly in filing the forms that need to be -- that will be the trigger for benefits.

One other point of interest on the issue of claim filing. It's our interpretation, again a lot of things are subject to nuance at this point, it's our interpretation, however, that the current statute indicates that benefits, specifically medical benefits, are keyed to the date of claim filing.

That means that individuals who file on July 31st and who are subsequently found to be eligible for benefits will be entitled to medical benefits effective July 31st.

My guess is, as a result of that piece of legislative structure, that the number of people we'll have on Day 1 in this program will far exceed 10,000 because it's in the interest of the individuals in question, and as information is disseminated through the process, to make your claims as early as possible.

That will mean that we will have a huge initial backlog, and it will mean that we have to plan structures that address gearing up very, very rapidly to process cases in a short order and then be able to hand cases off in many cases to the HHS since a large number of the cases will require dose reconstruction, but I think that gives you a general picture of where Department of Labor is, and I'll be glad to answer questions, if you have any.

MS. RUDOLPH: This might just be a reflection of my lack of knowledge of the details of the legislation, but you mentioned that people become eligible for medical benefits as of the date that they file.

Many of the eligible workers are going to be people who might have been sick and potentially paying out-of-pocket for a long time. Can they get no payment for, for example, medical payments that they've made prior to the time this program went into effect?

MR. HALLMARK: The federal portion of the statute addresses previous costs in effect by the lump sum option. The payment of the \$150,000 is intended conceptually to cover all previous damage, if you will. It's a compromise kind of approach, but that's the nature of the law.

So, there is no retroactive reach-back as far as medical bills are concerned.

MR. SHOR: The description of the program at Department of Labor sounds like you're doing somewhat of a parallel track to what's going on in the Department of Energy and maybe there's going to be a third parallel track at HHS.

I'm wondering how much discussion there's been to possibly promote a single point of entry for people coming in that coordinates between the different agencies or if somebody gives information at one place, that it can be transferred over to the other. You know, the populations are somewhat different, but maybe you can address that.

MR. HALLMARK: Well, the -- as I said, our efforts have been to try to coordinate the outreach process, which would include a DOE individual contractor, whoever, helping individuals compile their employment history and medical records, as Paul had suggested earlier, and Department of Labor representatives sitting in the same building, same room, helping the individual take those records and then file the forms that are necessary for our piece of the action.

It's entirely possible that those will be inter-penetrating kinds of activities. We've been talking about having a claim form that is really a composite of several pieces, so that it's all one form with tear-off sheets that apply to the different kinds of programs.

So, those issues of trying to integrate the effort as much as possible have been raised. It is important to note, though, that there are legal kinds of claims processing constraints, as I'm sure you know, in the state situation, where we need to be -- we need to have precision as to what constitutes a claim and so forth.

But within -- you know, with those kinds of concerns taken into account, we are trying to consolidate and integrate the process as much as we can.

MS. RUDOLPH: I'm also just a little bit confused. Are the medical panels that we're talking about, do those serve as both the DOL and the DOE --

MR. HALLMARK: No. The medical --

MS. RUDOLPH: -- side?

MR. HALLMARK: -- panels are strictly with respect to the worker advocacy -- the Worker Assistance Program that DOE will be running.

MS. RUDOLPH: So, that means that if you have any of the four scheduled -- three --

MR. HALLMARK: Some number of diseases.

MS. RUDOLPH: Asbestosis, silica, beryllium or --

MS. SPIELER: Not asbestosis.

MS. RUDOLPH: Oh, okay.

MR. HALLMARK: Beryllium disease, cancer-induced --

MS. RUDOLPH: Beryllium and silica and certain specified cancers, then do you have a separate set of medical panels or is it just based on your local physician's diagnosis?

MR. HALLMARK: No, no. The statute lays out criteria for each of the different conditions, and, so, in the case of the most common exposure, which is radiation, there are two different aspects even within that.

The special exposure cohort --

MS. RUDOLPH: Right.

MR. HALLMARK: -- would have a presumptive coverage. Those who don't have that special exposure cohort status would be required to go through a dose reconstruction process at HHS, which they are in the process of designing at the present moment.

In the case of beryllium, the criteria are a separate set, and we would be implementing those. Again, in the beryllium cases, it's fairly straightforward. Silicosis is a little more subject to analysis and medical evidence, but the primary issue for us is radiation.

MS. RUDOLPH: Okay. Thank you.

MS. SPIELER: Don't?

MR. ELISBURG: I don't know if this is a question for Shelby or Emily, but in listening to what you've been laying out here, Shelby, I commend you for really going down a great checklist of issues and things.

It's obvious that you've got a train moving forward for decision with packages, if nothing else, first-cut regulations and procedures and forms, and my question is, how do we as an advisory committee get our input into this process before you're locked in?

MR. HALLMARK: Well, as I said earlier, the department intends to ask for, if not a formal committee, then informal -- we have difficulty in terms of the time frames associated with trying to set up any kind of our own committee.

So, we were planning some sort of a process whereby we can request informal meetings to provide the kind of input that's permitted under the

APA. There is a limit to what -- there's -- the process is limited in terms of how much we can talk and how much we can listen, but that's what we plan to do.

MR. ELISBURG: So, I guess that gets to the question of whether or not this advisory committee, because of its responsibilities to DOE and DOE's intimate involvement in what you're going to be doing because of the way the cases and people are going to -- the claims are going to come in, whether or not this advisory committee in fact has some responsibility or ability to work with the Department of Labor in providing that function to you.

This came up obviously in the context of my -- of our Subcommittee on Claims Processing or Claims Development, where, you know, we don't see how you disconnect what DOE is going to be doing from what DOL is going to have to be doing as people come in and their claims get put together.

MR. HALLMARK: Well, I would -- I'm not an attorney, but I would assume that under the statute that governs this kind of committee, that DOE is responsible for interpreting the role and activities, the functions that the committee addresses.

Certainly from the point of view, as I started my conversation, from the point of view of the Department of Labor, any input that the committee or the members of the committee can provide to us in terms of these kinds of issues is encouraged and welcomed, but I don't want to speak for the Department of Energy, which has a legal responsibility in terms of the charter and such of the committee itself.

MS. SPIELER: If I may, it's certainly my understanding that the charter for this committee was written quite broadly to be of assistance to DOE in the entire implementation process of this law, that that clearly creates an overlap, I think, with some of the DOL functions, where DOE has a particular concern about the implementation, and it really does sound as if DOL is working quite diligently on these issues.

But the interface between the two agencies does -- has come up in each of the subcommittees in one way or another, and clearly from the -- if you look at this program from the bottom up, from the worker standpoint, we really need to ensure that there's a way for people both to get appropriate claims filed in the appropriate places in a timely way and in a recognized way, and that they now have to file multiple claims in different places, and to the extent, it seems to me, that that means that there's a necessary overlap with DOL's activities, then I think

my interpretation would be that it would come within this committee's potential area of interest.

Now, to me, that simply means, Shelby, that we need to work together, that because I think that you having -- your department having had the experience of some of the other laws that intersect with rights at the state level, the one that comes to mind being West Virginia, and that's obviously the Black Lung law, the more we can do to avert total confusion at the local level, the more it serves everyone's interests, the workers, the communities, this committee, the Department of Labor, the Department of Energy, HHS, and everyone -- and the state agencies who administer the state claims.

So, I think one of the challenges that we face, and hopefully we'll discuss at some length today and tomorrow, is how do we do that, so that things are as easy as possible, looking at it from the bottom up, and we'd like to be able to be helpful.

MS. TAYLOR: I guess from our subcommittee meeting, it was my understanding that the claims form that is being developed by the Department of Labor will be used by, is it not, DOE or -- because I think we did say one claims form would be best.

MR. BLEA: Just for clarity, I believe we said it would be in our best interests for the people claiming if the forms coincided with one another. I believe that's the way it was put. In other words, that when they go to DOE, the form, once it's filled out, they go to DOL, DOL accepts that, if I'm reading you correctly.

MS. TAYLOR: But see, I think that's -- that might have been what was stated, and I got there late, but I think you have difficulty then for an individual who's filing a claim, if they have to go individually to each department or agency to file a claim. That's a problem.

DR. SELIGMAN: Andrea, the only comment I want to make in that regard is that the DOE program is designed to assist workers in filing claims with existing state compensation programs, and these state compensation programs have their own forms and their own requirements for certain information, and we will be using those forms and doing our best to comply with those requirements in filing at the state level.

It's not our intention at present, although again we're looking to you all for advice, to develop an additional form on the part of the Department of Energy. We want to make sure that for each claimant who we're assisting in each

state, that we're collecting the information that's appropriate, that will allow us to assist them in filing a claim with the appropriate state agency.

DR. WAGNER: Will you also be assisting them in filing a claim with the Department of Labor?

MS. TAYLOR: Right.

DR. SELIGMAN: Certainly.

MR. ELISBURG: Well, actually that's what makes for the question about a universal claim form because someone coming in through this process is going to go a long way with your Workers Advocacy Office before they know which route they're being sent potentially, and I think that's what we're trying to express here, that you can't -- that wherever the bright lines are going to be, they're not going to be at that intake office for awhile, when people are coming in, and therefore it behooves you to recognize somehow in the process that that's probably going to happen, which led to a separate piece of that question, which is, the question is, have you worked out or would it be feasible for you to work out

perhaps some sample scenarios of who the typical claimant might be, and how this is going to go through the process?

MR. HALLMARK: Is that addressed to me?

MR. ELISBURG: Yeah. Well, either.

MR. HALLMARK: We've thought in terms of specifically within the tight time frames that we're talking about. We've thought in terms of what that initial burst of many thousands of claims is going to look like, and how we're going to be able to address in what order.

There are certainly some individuals that we expect to file more or less immediately with -- for whom the process that we have is relatively straightforward. The obvious example of that would be the RECA recipients who are entitled to some additional payment.

That is pretty much going to be straightforward in that Justice is going to tell us who these people are and whatever process they will tell you about in terms of their enumeration of them, and then, once they've become our claimant, we'll be able to make our payment and move forward with medical coverage.

Likewise, the special exposure cohort individuals, where there is fairly straightforward employment information, since it's a presumptive program, it's a fairly straight operation, and we expect that process to work very rapidly as well.

Beryllium is a little less -- will be a little more complicated, but it's a well-defined and marked disease, and therefore we expect that to move quickly in our process, and also it doesn't require the additional dose reconstruction leg.

The segment of the population that's going to be most difficult for us to deal with, and that will take the longest time, obviously, is the segment that we find to be a covered employee with a covered illness, in that case a cancer, because of radiation, that then has to pass to HHS, and, so, that's the scenario that we spent the most time talking about, and that is probably the most complicated and lengthy one.

MS. POST: I have a quick question here. You have then also done your thinking what you're going to do with those claims then that would not be covered under the federal program? What you all are going to do with Department of Labor when it's not sorted out in one of these areas, but it still was a covered employee or covered worker, but it's got -- the person has an other occupational illness? How are you going to send that to the states?

MR. HALLMARK: Well, that would be ideally identified in the outreach process as a DOE worker assistance individual and sluiced off into the process that Paul has described. Obviously there are going to be people who come at all of these programs from different angles. Some people will file claims directly with us, with DOE, from other places.

We'll try to help that process and integrate it and make it as transparent at the front end as we can, but some people will come in other ways, and we'll decide we have a claim from someone who is not a covered employee for the purposes of the federal benefit program, and then, presuming they are an employee of one of these DOE facilities, we'll just pass that person over to DOE at that point. But our hope would be that mostly those folks would be screened and found -- find their way into Paul's process long before they come to us.

MS. WELCH: Along those lines, do they have to be reviewed by DOL before their exposure reconstruction is done? Because if it can go from the DOE review, the DOE outreach offices could probably decide who's a covered employee with the right kind of medical condition.

But it sounded like the Department of Labor would do a review of those and then wait for the exposure reconstruction.

MR. HALLMARK: You're testing my memory at the present moment. I believe that may be one of the issues that's to be determined at the present in terms of how the interagency flow works.

The arrangement and the negotiation that took place in the development of the amendments submitted on January 11th established a particular flow among the agencies, and I could talk at some length about how that flow works, but that flow is to -- is out there as a to-be-determined piece. That's one of the issues that has to be resolved in the next several weeks.

MR. KATZ: Can I just pop in there? With the dose reconstruction, I mean, then that's an individual that potentially does belong in the federal system, and, so, I'm just not certain I'm understanding completely the question, and you're talking about them entering the state system at the same time in parallel or --

MS. WELCH: No. What I was thinking was that there's -- they have to get a determination from two different places. If it had to -- if you get a slew of 10,000 applications, a good number of them are going to be in the group that are applying for a radiation-related cancer that have not been put in the special exposure cohort.

So, -- and we know how long these dose reconstructions are going to take. Well, some people know. I mean, they're going to take -- so, if it had to sit at the Labor Department for six months before someone requested a dose reconstruction because it has to go through some process, and there's a whole lot of claims coming in, that would just add to the delay, and I was just -- didn't know if there was -- Shelby was saying maybe it hasn't been determined who requests the dose reconstruction from NIOSH.

MR. ELLENBERGER: I want to return to something that Don raised, and we've talked about in our Subcommittee on Claims Processing, and others have talked about it as well.

The law, when it was passed, provided for the establishment of just one advisory committee at HHS on human radiation and whatever -- workers health. The Department of Energy unilaterally and without direction from the law decided to establish this committee, and it's, I think, given us a very important opportunity to provide for public input to a very complicated and difficult process of trying to establish a system that is going to be responsive to the people's needs.

Unfortunately, the bulk of public attention, or fortunately perhaps, is on the part that is saddled in your division, Shelby. That's what's gotten the press and certainly that's where the interest on Capitol Hill is, and for all of us who have interest as representatives of workers who are affected or workers themselves, we are really keenly interested in the process that you're going through, and we thank all of the people in your division who are working hard at this.

But we don't see what's going on, and it's not transparent to the degree that the Department of Energy's process is transparent and open to at least this public comment and examination, and it's not something new.

I mean, we started down this road to encourage the advisory committee, when this committee was established, and whether we get there or not, I think we have got to do something with the Department of Labor to make sure that there is an opportunity for public involvement.

I think it's really important, and I'm glad that you and your colleagues are here, Pete, to hear our concerns and what we think is important, but I think we need to have more transparency, more opportunity for public involvement and public examination of the process, so that when those regulations are issued, and we all know that when regulations get issued, it doesn't mean that, okay, now we're ready to take your comments and make adjustments. It's really they're issued. There it is.

So, we hope to have an opportunity to have some input before May 31st, and we're anxious to work with you to get to that.

MR. HALLMARK: As I said, that is the interest of the Department of Labor as well. What the precise vehicle is is something that is yet - I've not gotten a complete clear decision on, but we are interested in receiving input, whether it's from a formal committee, from this committee or from informal discussions, and we're going to continue to work on obtaining that before issuing our regulations.

And by the way, I should clarify that we are, given the time frames, we are planning an interim final publication. That would be the vehicle of our regulatory process, which would in fact -- which does require or suggest that comments can be submitted after the fact to correct or resolve problems that are identified. So, just a small caveat to your statement.

MS. SPIELER: Let me just leap in here for a minute. There are a lot of hands up, but I think what I'm hearing around the table is a real eagerness to

be part of the process before you're that far along, and to the extent you're able, Shelby, and on behalf of the committee, I think it would be very helpful if you could share with us drafts of what you're thinking in terms of process and rules, so that we could provide you some feedback before you actually go into the more formal rulemaking part of your process.

I don't -- I realize that things are a bit difficult in a transitional political period, but to the extent that's not barred by what is occurring at DOL, if you would send those to Paul and have -- ask that he distribute them to the members of this advisory committee, we would very much appreciate it.

MR. HALLMARK: If I could just respond real quickly. There are limitations to what can be shared with respect to draft regulations, which have nothing to do with clearance processes but have to do with the APA.

So, within the caveat of that which I'm barred by statute and regulatory process, we'll certainly try to share with our friends at DOE that which we can do.

MS. SPIELER: Thank you. I'd appreciate it, and I assumed that you would remain compliant with the APA.

MS. HATFIELD: From a community point of view, representing the community, I guess we're very appreciative, of course, of everything that you've done and that DOE has done to this point, but one of my concerns is that when we talk about the employees that are going to be filing, and the employees that are going to be looking for answers or compensation or whatever they're looking for, a lot of them are from an older group of people, and a lot of them don't have anybody to look after them, and, so, it's hard for them to make appointments and to keep appointments and to move in different places and to do different things, and, so, I think it's very important as we move forward that we do centralize what we're trying to do, and when an employee or a former employee gets a form or a packet to fill out, they just kind of look at it and go oh, I don't know the answer to all these questions. I can't remember. Some of them can't remember. That's true.

So, it's really important that we make this process as non-stressful for them as we can because they've been through so much stress up to this point. I just wanted to put that in and say, you know, everything that we talk about sounds really good, but we need to remember that a lot of these people are not able to do or to comprehend.

Thank you.

MR. HALLMARK: And thank you for your comment, and we are fully cognizant of that, and one of the reasons why we want to have people on site, especially in the larger sites, is to provide that human face, so that it's not just fill out this form, but actually someone who is there to guide and to provide the kind of explanations for why is this necessary, and I think that's also paramount on the DOE side as well.

MR. MARKOWITZ: Did you say that the Department of Labor is considering setting up its own advisory board for input, is that right?

MR. HALLMARK: I said the Department of Labor has been requested again this afternoon to do that, and we are considering that request.

MR. MARKOWITZ: Not before this afternoon?

MR. HALLMARK: I'm sorry?

MR. MARKOWITZ: Not before this afternoon?

MR. HALLMARK: No. The request had come in before, yes.

MR. MARKOWITZ: There is a standing request at the Department of Labor to set up an advisory board?

MR. HALLMARK: Right.

MR. MARKOWITZ: I mean, we were not -- here on this committee, we were not asked by the Department of Labor, we were asked by the Assistant Secretary of DOE to advise him or her about their part of the program, and that's what -- in my view, that's what we should stick to.

I mean, clearly it intersects with the radiation side, but the main piece for us is the non-radiation piece of work, and the Department of Labor should have its own separate formal process for gaining input.

I mean, sure, they can learn here, but they need their own formal separate process that they can learn on an on-going basis and get feedback about their program.

MR. BODEN: I think I generally agree with what Steve just said. On the other hand, there are -- I mean, these -- all these pieces sort of fit together and overlap in important ways.

You know, for example, what I heard, and maybe it wasn't correct, Shelby, was that you would get claims in. You would sort of look through them, and if they fit in your program, you would keep them there. But those claims might also be eligible to be filed under state workers comp, and certainly in almost every state jurisdiction I can imagine, their having opened a claim with you would start the statute of limitations in the state going.

So that, it would be, I think, incumbent on DOL, as one of the possible entry points, to make sure that the claim filed with DOL got to the appropriate state agency as well, so that people would not lose a right to some other benefit by virtue of their having made a claim with the Department of Labor.

I think that this is sort of in that sense a whole system that requires whatever the initial entry point, that there be a single entry point, and that the process be set up so that the claim goes to all the places that it might end up at, so that people don't end up losing anything.

MS. TAYLOR: That's basically the same question that I had asked earlier.

MR. BODEN: Right.

MS. TAYLOR: If a person submits a claim, you know, and you've got three or four different claims, that's highly unlikely that they -- it will go to the right source because you have an one individual. You've got someone from a community, 70-80 years old, and they're not going to spend the time --

MR. BODEN: Right.

MS. TAYLOR: -- to do comprehensive claims, whatever. So, you've got to have one point of entry, and then whoever -- wherever it enters, someone has to be there to determine who gets it.

MR. BODEN: Right. What I was saying was that there may be three points of entry, but any single one of those has to be the point of entry and has to then --

MS. TAYLOR: Right.

MR. BODEN: -- make sure that the claim gets to wherever it's going.

MS. TAYLOR: Right.

MR. BODEN: So, that is an important interface, I think, between the --

MS. TAYLOR: The agencies.

MR. BODEN: -- federal program and the part of the program that we're specifically concerned with, which is the part in which people might end up in the state workers comp systems.

MR. BLEA: Well, Shelby, this goes back to what Laura was saying. Is there -- and exactly what you're saying about going through the three agencies.

If there's a test that needs to be done, why would it have to be done at DOE and then DOE says yeah, you have a claim for DOL, then go to DOL, and what your concern is, and I agree with you, then I have to wait again for DOL to do that same test. That was your concern, correct?

I believe what we're asking, is there a way to coordinate this so if DOE says yes, this person, in our opinion, should be entitled to claim with DOL, is there a way exactly with what Les was saying and what Laura was saying, to coordinate this, so when they go to you, you don't have to wait to retest them again to find out if it's a valid claim.

Do you see? I think we're all saying the same thing but saying it different, and I don't think we're getting the answer to say yes, that's the way we'll do it.

Don't get me wrong. There are certain things you can say, and certain things are the legal aspects of it. I understand that, but I think what we're looking for, is there a possibility or a legal way to, as an individual, 70-80 years old, my father worked up there, retired, 82 years old, I mean, he's not going to want to drive a hundred miles to go back to Los Alamos, then go here, go there, go there, and then they say okay, DOE says it's okay, and then go back to the Department of Labor and says okay, now you have to go through the series of tests again or reconstruction --

MR. HALLMARK: Stop. You're making me anxious.

MR. BLEA: So, I guess what we're asking in terms, is it possible to coordinate all this together, and then when they get -- and again, I got a chuckle this morning from the subcommittee because I would like to see when they go to the Department of Labor, you say, Rick, okay, everything's in proper order, DOE

has looked at it, DOL has looked at it, and we'll be sending you a check in 30 to 60 days. That's what I would really like to see. See what I mean?

Because I certainly don't want to have somebody go to DOL and then have to be sent back to DOE because they didn't fill out the form. I think the coordination should be there with these forms between DOE and DOL, and like you said, there might be some tabs that you pull out, and they will be able to work together, but I think these are things that are essential to the layman and to me as to say okay, this is what has to be done. This is coordinated with DOL and DOE, and when you go to DOL, it's a done deal, so to speak, not necessarily in every case, but why have to do the same test that you already did at DOE to go and do it at DOL? That's what, I guess, I'm trying to get at.

MR. HALLMARK: In a brief fashion, if I can just say, we are trying to do the coordination along the lines that you're suggesting, and I think we already are well along in thinking those kinds of patterns in the way you're suggesting.

I don't think it's -- I mean, this is very complex, and there are individuals who are going to have eligibility under both state workers comp and the federal program. So, there may be people who are going down both paths simultaneously, and we're cognizant of that, and we don't want to have people who are put into -- you know, you have to wait for one whole leg of the tree to be completed before you go to the other. That's not the case at all.

There are going to be situations where, as we said earlier, where people come in to the different agencies at different points, and they need to be routed back, but the goal will be that you come in, you get one set of data filled out, get your history as far as your employment, as far as your medical exposure, and you fill out the forms that say okay, this is--I am here by officially filing a claim for compensation from the Department of Labor under EEOICPA or I'm hereby asking you to give me whatever forms the state of Tennessee or New Mexico requires, and maybe all of that is done in one, you know, sheaf of papers.

So, I think the two organizations are certainly intent on trying to avoid any of the ping-ponging that all of us fear and don't want to have happen.

MR. KATZ: Can I just finish this up, though? Because now that I completely understand Laura's concern about the dose reconstructions, that has been worked out, actually, because what will happen is DOL will apply -- deal with the up-front issues of whether this person is qualified to have a dose reconstruction, because that would have to be done in any event, whether HHS were to have this person as intake or DOL.

So, they'll apply that, but as soon as it's determined that the person is qualified, that would come to HHS. So, there will be no waste there in terms of time or, you know, dealing with the backlog issue because each of the individuals will have to be determined to be eligible to get a dose reconstruction.

DR. WAGNER: At the risk of being overly concrete, but I think that a mechanism for reassuring the committee that, you know, all the good intentions are actually being fulfilled, I'd really like it if we could make a request to Paul as our point of entry into giving advice as quickly as possible to get this process diagramed out for us, including the points of coordination, where -- how the paper flow's going to go, so that we will understand, and if there are any points that we can make helpful suggestions, we'll be able to. But that to me is, you know, where we have our responsibility.

MR. MARKOWITZ: Does federal coordination ever extend to the idea of actually Labor and DOE sponsoring a single office at a site and having a single toll-free number that claimants could come to? So, it's the same person -- is that what's envisioned?

MS. SPIELER: Let me just say that the issue of the state filing is a separate piece here that we're going to be talking about some more, but one of the issues that was being kicked around in the Subcommittee on State Relations was this question of, well, what if someone goes to the state first? What if someone goes to the Federal Government -- one of the federal agencies first?

How should that be coordinated, and it's a particularly important issue with regard to this issue of the statute of limitations, and I'm wondering, and I'm just going to throw it out there for either later discussion or your thinking about, whether there's any way in this -- in memorandum of understanding with the states to ask that the states recognize a filing with either DOL or DOE as a filing within the meaning of the state law in terms of the tolling of statutes of limitation.

Well, right, because that way, it preserves any claim at the state level, and it -- that's something that I actually think probably could be done legally without statutory change at the state level, if the federal forms asked for the critical information that's required under the state statutes, and I just -- and I don't think that -- actually, that's -- my understanding is that that would not be all that difficult, although Shelby's laughing. So, it's a bad sign.

MR. HALLMARK: Well, I don't know the state laws, and, so, I don't want to speak for them, and there are circumstances where an individual might be disadvantaged by having deemed to have been -- to have filed at an

earlier point than was desirable for reasons having to do with that person's particular circumstance.

That's purely hypothetical on my part, and I don't want to stress it, but I just -- it's the kind of thing that I think you need to think about before you lock in mechanisms that say okay, legally, if you do this, you're deemed to have done it over here. Just need to think through all of those implications.

But in terms of the form, and this is something that I have some past experience with, and I'm sure Don remembers, we can't do forms without going through a little outfit called OMB, and they ask questions about every single question that's on the form.

So, if we have a form that addresses every state that might be implicated, and in effect is a super workers compensation form, that would require probably a couple extra months just for me to explain it to a fellow over in OIRA at OMB.

So, not to say that it can't be done. I'm not suggesting that it isn't a good idea or that we -- and I certainly hear what's being suggested, and that's exactly the reason why I came today, is to get these kinds of notions.

But just recognize that not everything comes without a cost, and the cost may be that it pushes the whole process back X number of months, and that literally has been known to happen with respect to paperwork clearances.

MR. BODEN: I'm not sure that that would be the case, and Iris, correct me if I'm wrong, but a lot of states now have the same first report of injury that's been worked on many, many years in order to get to that point, and the information on that may actually be pretty similar to information that you would collect anyhow.

So, you may be in the position, because of the ADI, that this is really not an extra burden, and it might be a matter of -- you might need to take one additional step, which is, you might need to send it to somebody, like the employer or insurer, in order to have that happen, but I think that's not a huge deal.

MS. POST: The IRBC has established a uniform first report of injury and subsequent report of injury that many, many jurisdictions accept, and that would be a fairly easy -- it's been accepted by the Bureau of Labor Statistics and Department of Labor.

So, it would be just a matter of, you know, using that form or something similar and adding those pieces that are state specific to those states, and that could easily become part of the memorandum of understanding or agreement.

Going back to that issue about -- you raised about the statute of limitations issue on a state-by-state basis, one filing for DOL or DOE would then toll the statute in individual states, that may not be an issue if you have contractor agreement to weigh the statute anyway, and as long as that's part of the agreement, I don't know that that's a big deal.

MR. ELISBURG: I think, Shelby, you're going to have Paperwork Reduction Act OMB issues regardless of what you do. Perhaps if it's a single form across the agencies, it might save everybody a couple of months.

But having said that, question, Emily. Are we on record sufficiently demonstrating our interest in one-stop shopping in this process or is it useful and necessary, either now or later in this meeting, to formally go on record with all of these agencies about our concern with both coordination with them from us, but mostly coordination between them and the people out there who are going to be the beneficiaries of this program in terms of the -- every effort to have a one-stop arrangement insofar as possible for the handling of these claims?

MS. SPIELER: It might be useful to have a formal instruction come from this committee. My inclination, although I'm definitely of two minds about this, would be to postpone that until we have a fuller discussion of the claims process, and if, at that time, we feel that that's necessary, that we entertain that motion.

This time was actually intended to be a time for reports from the agencies, although, Shelby, if there's any chance that you could stay, we're going to probably move after the break to a discussion of both the claims filing and processing issues, and they will impact some of these questions. If you could stay, we would be delighted.

But otherwise, I think perhaps we should move on to the reports from HHS and DOJ, unless I hear any objection to that.

MR. HALLMARK: I won't be able to stay, but Pete Turcic, who is our team leader, is here, and he's --

MS. SPIELER: Wonderful.

MR. HALLMARK: -- been the one who's actually doing the coordination with DOE, and, so, he's fully capable of addressing the issues.

MS. SPIELER: Okay. We really appreciate your time.

Ted, you want to go next?

MR. KATZ: Yes. NIOSH acquired the responsibilities of HHS under the Act for the most part, some which it shares with HHS, but -- and I think Shelby actually very eloquently addressed both on enthusiasm for the challenges of our role in this and the challenges, the fact that we have a lot of anxiety to share, and it's doubly daunting, as he noted, because of the change of the Administrations and all the things that that has meant in terms of raising hurdles for moving forward.

Do I need to -- I just -- I don't know the history. I wasn't at the last meeting. Should I run over what NIOSH responsibilities are? Is that helpful?

MS. SPIELER: I think you should do that quickly. We have some new people here.

MR. KATZ: Okay. So, very quickly, I mean, NIOSH in general has sort of the science and science-related policy development role under this statute, and those are a large regulatory and policy-making role.

There are essentially three separate but interrelated policies that have to be developed, and they all relate to compensation for workers with radiogenic cancers, and the first of these policies is to determine whether the cancer was work-related or not, and we will have to develop guidelines, and those are regulations, for a decision log for how that determination gets made, and it relies in part on the radioepidemiologic tables that NCI has produced that are used for compensating veterans exposed to radiation and atomic nuclear weapons tests.

But it's a lot more complex than that. So, there's that set of guidelines but which are regulations to develop. The second set of guidelines or regulations, they are methods for doing dose reconstruction, and the third set of policies relate to what's been talked about here, the special exposure cohort.

Classes of employees can petition HHS to become part of the special exposure core that's been established, and HHS's responsibility is to set up those procedures, and in all likelihood, those, too, will be regulations, given the nature of that task.

So, this is a large regulatory role, quite complex, difficult science, a lot of missing information which makes for hard policy decisions.

The second responsibility is NIOSH acquired under the Executive Order for implementing the Act responsibility for doing the individual dose reconstructions. So, we will be applying the methods that we develop by regulations to dose reconstructions for each worker who has cancer that may be radiogenic and related to their work at DOE.

The third responsibility is related to these actually. It's the establishment, and it's been mentioned here earlier, of a presidential advisory board on radiation and worker health, and the final responsibility which relates directly to the task that you have is the appointment of physicians to the physician panels.

So, those are responsibilities. Since you met, the biggest news is that we actually, you know, some 107 days after enactment received budget authority to start working on this program. So, on February 15th, we were given the green light, and needless to say, we are hurrying under this regime.

The first thing we've done is we've started recruitment, and we're obviously having to pull people in on details. There isn't time to hire people at this point, the full-time people. We've started that process, but we've pulled people on detail from NIOSH. They'll be reporting on Monday to get started particularly on this large regulatory task that we have.

So, we've also established a new organizational component of NIOSH, Office of Compensation and Analysis and Support, OCAS. That will be based in Cincinnati. It's going to be placed adjacent to -- we have -- NIOSH has responsibilities for a number of years now for doing epi research on DoD worker populations, and it's going to be adjacent to that because there is a lot of record-sharing that can go on there as well as similar expertise that can be made use of. It will report to an associate director in Washington, D.C., however.

So, we've established the office. We have sort of a bare-foot implementation plan, and we started staffing. The staff that we're pulling in up front are health physicists, epidemiologists, statisticians, and risk assessors, a staff of about, I think, eight to 11 to start with.

On the advisory board, we have done our work to establish the advisory board, at least on the front end, and the task now is for HHS and the President to appoint this board. In some ways, it's unfortunate that it's a

presidential appointment because that requires a lot more time, and obviously the change of Administrations has made this very difficult.

NIOSH was -- HHS was -- Greg mentioned earlier a hiring freeze. They like to use the term "hiring controls", but these hiring controls in fact affected this as well because we weren't allowed to move a package even for an advisory board, even for a statutorily-mandated advisory board, under those controls.

The regulatory work. This is what we're going to be starting on Monday, and we are consulting with NCI, which produces the radio epi tables, which have now been developed into a sort of interactive software program, and we're also going to be working with the Department of Veteran Affairs, which administers compensation for the veterans with radiation exposure, and have regulations in place to address that.

We're very eager to -- this got belabored with Shelby. We're very eager to have, particularly because we don't have our board in place now as well, to get stakeholder input early on for our regulatory tasks, and, you know, in one case, we -- it was just shipped to us by one interested party out there who worked on behalf of a lot of workers, very detailed concerns about the regulations for dose reconstruction and probably of causation.

But we'll be reaching out to get people's ideas about these regulations early on, while complying with APA. I mean, I think it can be done actually. It can be done, get individual comments, you know, get consensus and so on, but it's -- so, we'll be doing that very soon, in coming weeks, I would say.

And then, at last, dose reconstruction. Obviously that relies on the methods that are developed by regulation. So, we're not steaming forward on dose reconstruction development of -- other than hiring of staff for that at this point. The major sort of thoughts which echo, I think, concerns that have been raised around here about working with the claimants is we certainly intend to bring the claimants in, and this will require more than just the initial contact from DOL

We will have to have close contact with the claimants to do these dose reconstructions because, of course, their experience will be an important factor as well as the DOE records in doing these dose reconstructions.

Then lastly, the physician panels, and we're -- that's why we're here today, and we were here in the last meeting, and we'll be working closely with DOE to do our piece of making sure that the appointments occur efficiently, and right now, we'll be -- we'll start very early on, just gathering together the resources

for sort of a directory, so that we can, when the time comes, appoint physicians with dispatch.

MS. SPIELER: One simple question, and then I'm going to turn it over to others. Will you be personally acting as the kind of liaison on this program? Is that NIOSH's intent?

MR. KATZ: No. I'm not sure that NIOSH has a clear intent on this, but Larry Elliott -- I'm here sort of on his behalf right now. He will be -- he is at least detailed for the short-term to head that office in Ohio.

We'll also be hiring someone in Washington, but -- so, there -- you may see a number of faces here over time.

MS. WELCH: Can NIOSH finish the regulation without the advisory board?

MR. KATZ: No.

MS. WELCH: If the advisory board never gets appointed?

MR. KATZ: Legally, I think not, because the statute says that they will advise us on the development of those, particularly the dose reconstruction methods, and moreover, we need them. Somehow we're going to get them in place. I mean, everybody keeps saying I'm optimistic, but I think it'll happen. I think this Administration will get that in place.

MR. ELISBURG: Do you have -- I'm getting into the medical area. So, -- physics area, which is even worse than the medical area. Do you have a proposed protocol or a set of issues that you have defined in terms of how you intend to deal with the dose reconstruction where there is no dose to be found?

I mean, the fact of the matter is that the shadow over all of this, despite what the language of the statute is, that there are thousands of potential claimants out there for whom you will never find the data that you are looking for, and if you look for that data, we will be meeting here in the year 3000 discussing ways of dealing with the claimants, and it is a very important, important concern that HHS and NIOSH not get off on the wrong foot and spend a lot of years trying to do that which cannot be done or not finding a way to do which ought to be done, which is to figure out how to take care of these people who need their claims paid.

I get very nervous about sort of the bottomless pit of trying to establish and collect data that people have been trying to establish and collect for 15 or 20 years that I know of.

MR. KATZ: I think you're right. This could be a trillion dollar program.

MR. ELISBURG: That was intended to be a neutral question.

(Laughter)

MR. KATZ: So, it's absolutely right, and NIOSH isn't looking to drown in a bottomless pit on these. This is part of the reason why the policy-making will be very difficult, because we will have to deal with the absence or paucity of data, that we will have to be smart about how to manage that, and where, you know, in cases where really there is no way to bring data to bear of any sort, of course, that then raises issues -- sort of moves to the next possibility, which is adding groups to special exposure cohort as well.

MS. RUDOLPH: Well, a related issue that I just -- I don't know if you've thought about, but many, many years ago, I spent some time in Hanford talking to workers there, and it was really a common comment from them that they thought that their badges significantly under-estimated their actual radiation exposures because of just what the policies were, which were either lax or beyond lax in terms of encouraging people not to wear them during certain tasks, for measuring actual exposure.

That, in a way, is almost a worse situation than having no exposure data. It suggests that you'll have exposure data that's actually erroneous, and, you know, I just -- I'm thinking that it really merits some kind of more systematic outreach effort to workers to talk with them about what the policies and what their concerns are in that regard, so that you can take the measurements that you do have with the appropriate grain of salt, if in fact that's appropriate.

MR. KATZ: Again, you're exactly right. That is an issue. We've learned a lot about it from doing our epi studies in this area, and in many cases, we've learned about making adjustments because of just that sort of issue, and, of course, there will be an enormous amount of learning to come about the problems with the data.

You know, it will be interesting actually because there'll be a lot of cumulative learning occurring as these dose reconstructions go on, which raises

other issues, but you're right, and it's one of the reasons the dose reconstructions are going to be difficult.

It's also one of the reasons why we plan to spend real conversation time with each of these claimants, so we can understand what they know, and we can learn from their fellow workers as well about this sort of issue. But a considerable amount is known about these kind of problems, and there are in many cases ways that have already been devised to adjust for those sort of problems.

MS. TAYLOR: I think he just covered it. We talked earlier in our meeting regarding there's not a lot of exposure information and data that exists. So, you have to look at other things, like job classification, job title, location, those kinds of issues, and then, of course, most important would be the interviewing the workers themselves, to get a cohort group.

So, I mean, what else can you do, if there's not any data that exists or very little?

MR. MARKOWITZ: You mentioned special exposure cohorts before. NIOSH has the job of entertaining requests for groups to become -- to be added to the special exposure cohorts. Has NIOSH given any thought to about how it's going to look at that question?

MR. KATZ: Little. A little. I mean, as I said, the people that are going to do the hardest thinking about this are just coming on board on Monday. So, we have started to raise issues, like issues that I'm hearing here, that will be difficult issues to tackle. We've sort of started to put those on our radar screen now, but as far as answers, I mean, you know, we have a lot of work to do.

MS. SPIELER: Just a request before -- while I'm -- although quite clearly, some of these issues are not within the scope of this advisory committee's sort of jurisdiction, it nevertheless, I think, because of the concerns of individuals on this advisory committee, to the extent that NIOSH could keep us posted through DOE on your progress, I think people would appreciate it, and specifically with regard to the medical panels, I gather you're waiting for DOE to say here's what we want.

MR. KATZ: And that's right, and we're happy to work with DOE on getting to that answer, too, not just sitting on our heels, but right, and we'll be here for all of your meetings, as you schedule others.

MS. RUDOLPH: I think various members of the committee keep asking this question of different people, but how many people do you anticipate you'll have to do these reconstructions of exposure for?

MR. KATZ: Well, this is -- I mean, we had to do this to budget for this activity, and it was difficult because how do you do that?

But very -- to be extremely crude, which is the only way we could go forward and come up with a number, I mean, we figured, you know, about one in four people develop cancer in their lifetimes, and, so, we then cut that by a little bit but basically take almost a quarter of the entire worker cohort and assumed at some point, we would see them asking for a dose reconstruction because they would have cancer some day and wouldn't know whether it was associated with their work.

So, that gives you a pretty fat number. The number we used for our budgeting was a 135,000 workers over a 10-year period.

MR. ELLENBERGER: Ted, you had expressed some optimism on the prospects of the President actually appointing this advisory board. Any inclination on your part to share why you have this optimism?

MR. KATZ: I mean, this is just -- I'm accused of having a genetic problem here. But, you know, we're working with -- you know, so far, we're working with lower elements in the department, but certainly within HHS, there's a strong desire to see this accomplished, and, so, we have good allies in HHS to get this done, and that's why I think it'll happen.

MR. ELLENBERGER: Has it gone through CDC yet?

MR. KATZ: It is -- it may have been sent by CDC today. I can't tell you, but it's sitting on the desk waiting to be shipped.

MS. SPIELER: Other questions for Ted?

(No response)

MS. SPIELER: We're almost to the quarter to 3, which was our break time, but on the other hand, Claudia's been waiting so patiently. So, with the -- unless the committee's going to override me here, I think I would go ahead with Claudia's report before we take the break. Is that all right with everyone? Okay.

MS. GANGI: I think you will find this to be very brief. You know, you are up against an enormous task, and our role, the Department of Justice's role, is relatively small compared to the other agencies you've heard from today.

I do want to thank you all on behalf of the Department of Justice for inviting us to speak to you today. I think it was Dr. Seligman who actually put that out there, and we're very happy to be here and share information about our small part in this.

By way of background, the RECA Program has been in effect for over 10 years, and we are well established, and we provide a straight administrative program that provides compassionate compensation to individuals who were exposed to radiation during either aboveground atomic weapons testing during the development of nuclear weapons era, or as uranium miners, and we compensate on-site participants, down-winders, and miners, millers or transporters.

Have that affects you or the new energy program is what we call it, and EEOICPA is a mouthful, but is that I think in an effort to gain parity for the uranium miners under our program, who obtain a \$100,000 under our program, the energy bill provides an additional \$50,000, plus medical benefits, to those individuals who have been approved or have received compensation under the RECA Program.

Our role, as specified in the Executive Order, is to develop procedures to identify and notify those individuals who were compensated under RECA who may also be eligible for compensation under this new program, and we are well into the process of putting that into place.

We also are tasked with sharing information with the Secretary of Labor upon request to assist in the adjudication of these claims. That is the extent of our role, and, you know, it seems so much smaller than what the balance of this room has got to tackle, but I've been with the Department of Justice for six years but was just brought on to RECA at the beginning of February specifically to act as liaison for this program and to make sure that the notification takes place, that we contact all those people, we spread the net wide enough.

I've been meeting recently with the Department of Energy and the Department of Labor to talk about the flow of paper, and how this is actually going to work when we get down to brass tacks.

In terms of the numbers of eligible claimants that we foresee coming to the energy program, we currently to date have approved just over 1,700 claims for miners.

Our program last summer was significantly expanded through new legislation, however, and the Congressional Budget Office has assisted us in coming up with some numbers, and it's just an estimate, but from now to the year 2005, we believe there will be approximately 7,900 miners, millers and/or transporters whose claims are approved under RECA. That would automatically trigger a legitimate claim to the new energy program as well. So, those are the numbers you're dealing with.

If you extrapolate from that the number of claims that we see that have multiple claimants who are eligible surviving beneficiaries, we get up to a number that's close to 16,000. We have a lot of cases that have several siblings applying, you know. Some of the cases out of the Navajo Nation, you will see up to 15 and 16 children applying for compensation under RECA as the eligible surviving beneficiaries.

So, that number, again through the year 2005, in terms of the number of individuals that you could possibly see knocking at Department of Energy's door, Department of Labor's door, for compensation, but we're happy to be involved in this, and we'll do what we can to assist in our small role in making this run smoothly and efficiently.

MS. SPIELER: Thank you. Questions for Claudia?

DR. WAGNER: Not really a question but just an observation, that you've had to fight through a number of the important policy issues concerning compensating people where there's limited exposure information, trying to deal with some of the ambiguous issues, and you've, I know prior to your involvement with this, have also received a fair amount of political attention for undershooting or overshooting.

I think that in fact, while structurally your role is pretty limited in identifying and sending additional money and new benefits to the people already compensated, the experience that you've had should also be taken advantage of by Department of Energy and Department of Labor, HHS, in order to help both avoid the mistakes of the past but also learn from the things that you've done well.

MS. GANGI: Absolutely, and we recognize, you know, I think the RECA Program, long before my time at the Department of Justice, went through a lot of growing pains, and you learn a lot of these things as you go.

We have an enormous amount of institutional knowledge, though, to share and are happy to do that, and again our working with Dr. Seligman and his group and Mr. Turcic and his group, and, you know, we have these wonderful paralegals behind me who are actually down in the trenches doing this work and are a wonderful source of information for the nuts and bolts of how this actually works, where does the paper go, what do you do when you're missing information, etc., etc.

We've ironed out a lot of those wrinkles over the years, and I think we can provide some assistance to that effect.

MR. ELLENBERGER: Claudia, just to follow up on that a little bit, I realize that you have some brief experience with the program, but we're all very interested in finding as much guidance and experience as we can in outreach programs and actual process of claims management, and are there things that specifically you can point to with us today that might be helpful to us as we grapple with some of these issues?

MS. GANGI: I think as a general matter, we do have a lot of experience with outreach, and again, working closely with Dr. Seligman, we talked about trying to coordinate those efforts.

You know, the Department of Justice makes annual visits to the Navajo Nation, for instance. We have a visit coming up this -- in the Fall to South Dakota. So, we have a very established process for our outreach efforts and going out into the field.

We don't have field offices of any kind. We just make the annual trips, and I personally have not been involved in any of those efforts to date, but I know that the process is in place for, you know, sort of the contacts that we make out in the field and how that information is disseminated to those who might want to attend any kind of open meetings that we conduct in order to provide information to potential claimants.

I think that if we work with the DOE on that and trying to coordinate those efforts, we can -- I think, going together is certainly one approach, I think an efficient approach, and again, our cohort is such a small part of those claimants that you're going to see, but, you know, by doubling those

efforts, I think we're going to try and reach as many people as possible who do have potentially legitimate claims under the new program.

But again, I think that the next one is going to be coordinated through the DOE's office, when they establish their outreach visits certainly, we want to try and coordinate and make sure that we are part of that and vice versa. Any efforts that we make to perform outreach on the RECA Program, we will be in touch with DOE to -- and the Department of Labor actually to, you know, invite them to join us and provide information about this new program, because it does affect a large part of the claimants that we see at RECA.

MS. SPIELER: Any questions?

(No response)

MS. SPIELER: Claudia, thank you very much, and Ted. Ted, are you going to be able to stay? Because I think we're going to be coming back to the medical panel issues, and we would really appreciate your thoughts.

MR. KATZ: I'll be here tomorrow, too.

MS. SPIELER: Great. And I think what we ought to -- I think that the information from the other agencies was incredibly helpful in really forming the conversations that we'll be having for the rest of our meeting, and the subcommittee conversations as well, and to the extent the other agencies can keep people on this advisory committee informed about what's going on, I think it would be just helpful in terms of building on each other as opposed to inventing separate wheels, and I really appreciate your spending the time. Thank you.

Why don't we take a 15-minute break?

(Whereupon, a recess was taken.)

MS. SPIELER: I'd like to make a proposal about how we proceed at this point and see what the rest of the committee thinks about it, as soon as you all sit down.

Okay. It seems to me there are some inter-related issues of worker notification, claims filing and claims processing, that need to be addressed and that have overlapping concerns. They touch on the work of three of the subcommittees, and they're kind of three of the separate task lists that Paul Seligman has laid out for us, and I would like to propose that we discuss those for the remainder of our time this afternoon, that tomorrow morning, we proceed with

talking about the Medical Panel Issues and possibly then the Contractor and Insurer Relations Issues, and if there's time, the Performance Evaluation Issues.

What do the rest of you think about that as a sort of way of proceeding?

MR. MARKOWITZ: I didn't understand that clause at the end of if there's time about the Performance Evaluation.

MS. SPIELER: Only that I'm a little concerned that we will run out of time, and I -- after talking to Les about it, it seemed that we should try to get to that, but if we didn't, that we could start -- we could address that at our next meeting and in between meetings. If that's a problem, then we just need to make sure we reach it.

MR. MARKOWITZ: The other question I had was whether it's possible to carve out any time, additional time tomorrow morning for the subcommittees.

MS. SPIELER: I actually think that's a good idea. I know that one of them is already talking about meeting at 8:00 tomorrow morning, and what I'd suggest is that in a couple of hours, we kind of make a decision about how we want to proceed, that I think that the issues that have come up with regard to notification, claims filing and claims processing are large issues that the agencies need to move forward on rather quickly, and that we would -- we may want the bulk of the time this afternoon to talk about them.

If that turns out not to be true, then we can move forward. I would say that we might want to have subcommittee meetings either between 8 and 10 tomorrow morning or possibly for the entire morning, if that's what we conclude at the end of this afternoon.

Steve, do you have some concerns?

MR. MARKOWITZ: On the list here, looking at the agenda, so which ones do you want to combine? It's the Claims Submission, Claims Processing. What's the third one?

MS. SPIELER: State Agency Relations, because they -- the Claims Filing questions in part impact on that.

MR. MARKOWITZ: Okay.

MS. SPIELER: What I would suggest in terms of kicking this off is that we hear from the chairs of the three subcommittees just as to where the subcommittees are in the process of reaching some kind of understanding of these particular issues, so starting with Vikki.

Subcommittee Discussions

Claims Submission/Worker Notification

MS. HATFIELD: Well, since I missed part of the meeting, I'm going to give you a little generalization. I apologize again for being late this morning.

But I have a general idea about what they agreed on and what they felt like, and then, if we want, maybe we might talk with Ricky or with Andrea and see if they have any other input in anything that I might have missed.

As we talked about earlier, we did want to see that everything was centralized, so that the employee didn't have to move around in filing their claim. I think we think that that's really, really important, that we make it as easy on them as possible, and not make this a -- although it's going to be complicated, we don't want it to be any more complicated than it already is, especially for some of the ones who are just not able to fend for themselves.

You know, for it to be one claims form, just one claims form for the whole thing, not two separate ones or three separate ones. We think that needs to be one form. Maybe it can be multiple form, maybe not. I don't know. That's something we're going to have to talk about, but I think that's important, also.

We want to make sure that when we start this staffing process, that we get competent staff who's caring and realizes the position that these people are in, and that they are consistent and give the same story in all the offices, so that there's not any interference or someone talking to someone else and finding out that there's something else being said.

So, I think it's important that we get consistent, strong employees who are gentle on one part, but who are strong enough to take care of the problems. You just have to make sure that we know they have the personality that can deal with these people.

And we want to see a clear flow from start to finish about how this process is going to work, so that before it's said in the process, we can understand it and see if we think it's going to work for the employees.

Ricky, do you want to add something?

MR. BLEA: No. But I think that Peter could answer, that really a lot of our questions have been answered, and they're already in the works. I think we'll find that out after everybody's reported, and we move on with the conversation, but talking with Peter and Doug, I believe all our concerns are really being addressed, and, so, that's a good thing.

MS. SPIELER: Andrea?

MS. TAYLOR: No, I don't have anything else to add. I think Vikki has a good grasp.

MS. SPIELER: Did you all talk about the notification issues, reaching out issues as well as the filing issues?

MR. BLEA: Yes, we did, and we kicked around, correct me if I'm incorrect, Steve, I think one of the methods that was discussed was the way we got people to the public meeting, and how to outreach to the people out there.

Of course, if there's money available to do, but, you know, the newspapers, free radio, you know, this type of thing is a way to go, I believe, and I think it will be very successful in doing that, but we did have a discussion on it, but I don't think we came up with anything concrete on which way we want to go with it.

MR. MARKOWITZ: Well, the point was made that it would be important to include current and former workers in the local offices as much as possible for purposes of outreach and claims assistance, that they had great credibility, great stake in the program, and then the former worker medical screening programs had been extremely useful in establishing a credible, trustworthy program that really helped DOE get that face on this program s well.

DR. WAGNER: Was there any discussion about trying to assemble a registry of eligible workers and doing direct notification?

MR. BLEA: I don't think we directly focused on that, but, you know, one thing that was said here today, that I believe Paul said that there had been 1,700 phone calls coming in, and a mailing of 10,000. I think that's a place to start, and that would be my suggestion, where we go, but, you know, --

DR. WAGNER: One of the reasons I asked is that in the evaluation group, we talked about that in one of the -- that there's the group of

workers who get notified and are going to be making the phone calls, who will come to a public meeting, but that more difficult group is the people who are never going to hear about it, and we aren't going to know that they aren't going to hear about it, and, so, I'd encouraged the subcommittee to begin thinking about that group, also, sort of those who have moved away, are, you know, in some way outside the kind of easier public notification.

I mean, it could well be that, you know, 80-85 percent of the eligibles can be gotten through these big public notification efforts, but it's the other 15 or 20 percent that might be very difficult to get to, and there should be some consideration as to how much effort should go into notifying them.

MR. BLEA: I agree with you a hundred percent, and that's why we were thinking about the tv and the radio and newspaper aspect of it, and a lot of times, we can do that for free. There are a lot of radio stations will advertise this for time and time again for a couple of weeks for free, but, yes, you're absolutely correct, and I think in the meeting this morning, there was no doubt that we didn't want to leave anybody out in reaching them to let them know that this is available.

MR. BODEN: The places where the former and current worker surveillance projects are on-going, a lot of them have developed lists of former workers which may be combined with other lists that are available to make a pretty good start at a comprehensive list where direct mailings could be done, particularly when added to the list that's already been developed from the telephone, from the hot line program.

So, it would be possible, I think, to do a pretty large mailing based on what we've got already.

MS. SPIELER: Paul, how much is DOE already planning to do all of the specific things that have been mentioned with regard to outreach?

DR. SELIGMAN: We've certainly talked about most of all these ideas with the exception of going out and doing another mailing to try to find individuals who may have been -- you know, are developing these kinds of additional rosters or registries. That's certainly something that can be added to and certainly something that we can consider.

It's interesting that in our former worker programs, we've -- the different programs have tried different outreach and worker notification techniques. Some of them more formal, along the lines of building registries of employees and mailings. Others less formal, just involving, you know, word-of-mouth or union contacts or media exposure, and what's been fascinating to me in

this process is that both mechanisms at least seem to have the same yield, if you will, in terms of ultimately attracting people into the programs.

That's not to say that one is better than the other or -- but it's certainly worth, you know, considering as many approaches and techniques as possible and to reach out to workers.

MS. TAYLOR: Are there worker lists that exist from companies? Have you been able to get any information from the company lists?

DR. SELIGMAN: You're talking about --

MS. TAYLOR: Facilities.

DR. SELIGMAN: -- the atomic weapons employers list or --

MS. TAYLOR: Atomic weapons, DOE, all of the various lists, yes.

DR. SELIGMAN: Yes, such lists --

MS. TAYLOR: Exist?

DR. SELIGMAN: Personnel lists exist.

MS. TAYLOR: And are they or have they been contacted or mailed information regarding --

DR. SELIGMAN: For this program? No.

MS. TAYLOR: Okay.

DR. SELIGMAN: Not yet.

MR. ELISBURG: You know, it might be better if we get all of our reports out because what you're doing is getting into all the subjects that we've all been talking about across these subcommittees. So, I think if we all report, then I think we can see the mess we're really in.

DR. WAGNER: I just want to -- Paul, you said something about yield. Do you know what the denominator is to be able to know what the yield is on these outreach efforts?

DR. SELIGMAN: Yes, and in some of them, we have a pretty good idea of what the denominator is.

MS. SPIELER: Could we come back to this and hear from the Claims -- the Processing Subcommittee. Don?

Claims Processing Issues

MR. ELISBURG: Yeah. We had a teleconference subcommittee teleconference on Monday. The participants were Jim and myself, Paul and Jeff Egan, and the other members of the subcommittee presumably have caught up with their e-mail to get the results of what we talked about.

I think we covered probably two, I guess you'd characterize as, over-arching issues and then five specific points that we were concerned about. The first one was our sense, and again you're hearing it through everybody else again today, that we felt we could best respond and assist the agency by having something to respond and assist with, and that we could just take abstract dialogue so far, and we really needed to see some kind of a game plan, some kind of specifics of how the process of claims processing would work.

Secondly, that we have very, very, very serious concerns about the interplay and inter-reaction of what this claims process is at DOE vis a vis the Department of Labor, and that the two are really bound together, and that you cannot separate them, and it is very important for us to have some ability to respond to what DOL is doing before DOL locks itself into something that DOE won't be happy with, and then at least the advisory committee won't be happy with.

We then covered five issues that are involved in the claims development process. First is the issue of employment records, and the concern we expressed was the importance that DOE has got to assist the claimants in verification of this information involving dates, job titles, clearances, whatever that's necessary for processing claims, and that goes to the whole range of potential people here which includes the contract employees, the subcontractor employees at whatever multiple levels they are, and the atomic workers and beryllium worker employees as well.

Our thought was that it would be very difficult for DOE to say, well, we can help this class of workers, but we can't help that class of workers in getting this kind of information because no one will understand that, least of all the claimants.

The -- how you go about doing this, I think we were suggesting that you might want to utilize the services of perhaps the former workers program or some other kind of groups that could help track records down, do some of this work, perhaps people with some expertise, that you didn't need to assume that it had to be DOE individual people. This was clearly something that lent itself to outreach, and it could well be outreach towards the equivalent of assistance-type institutions or individuals.

Obviously that there was a need to coordinate with both the Department of Labor and the Department of Justice on how you were going to do this, because tracking a set of records down would be hard enough for one group, let alone for two or three, and then the other point is that we have to recognize that the atomic worker employees, you know, there's a list of 317 and growing, and the beryllium vendors may well be very, very difficult in tracking these kinds of records down, and that there's going to be more to that than sending a letter. I suspect there will be more than that just sending a letter to the contractors and subcontractors as well, but that's --

On the medical and health records, we -- the second item, we talked about the -- again, the DOE really having to reach out and provide assistance to developing claims and obtaining the necessary medical records from the contractors and doctors, etc., and again that they may have to reach out and use some assistance, I'll put it in terms of contractual assistance, but could be organizations, non-profits, advocacy groups, somebody to help track down these records as well as they're going -- they really should be taking a very proactive effort in assisting the employees in getting the necessary medical evaluations put together, that this is not something that you can leave people out on their own.

Then the third point is how you're going to look at the atomic worker and claims are going to obviously be perhaps a little more difficult because you -- it's not even clear what the standards are that you're going to have to be doing, but again take a proactive approach.

And then, finally, a little touchy but it depends on who you use, and particularly if you're using what I would call claimant-sensitive advocacy groups, that you might want to engage in some kind of pre-screening at least to the point of, if there's nothing going to be there, don't hold out people's hope.

It doesn't mean you turn them down, but at least let them know this is not one where it's likely to be going anywhere, to save both a lot of grief for the claimants as well as a lot of clogging of the system.

You're going to have -- a third point is you're going to have a similar problem in getting other kinds of -- finding survivors, tracking down death certificates. You're going to have to really look at what are you going to do with the state agencies in terms of how you're going to actually get them to accept claims, what kind of information you're going to be developing to send them claims.

We think that there's more to this than just sending a claim to Iris or somebody, but that, you know, they're going to have to have a package, and you can't really rely on the state agencies. This is hot stuff but not this hot.

The fourth point was similar discussion for exposure records. I think I mentioned it earlier. This is another very tough issue that someone needs to make some proposals, so that you have some kind of game plan to go on as part of developing this whole claims business.

And then, finally, we touched on the need to look at some process of a dispute resolution in this claims processing that avoided bringing in the lawyers at first instance because this could have a serious potential for tying up the process, and whether you call them ombudsman, whether you set up a system of special masters or something, some kind of an informal but recognized fair process because a lot of this is going to be the question of what do these records mean, were you here, were you there, that lends itself probably to a mediation or conciliation process and not a hard-nosed let's go to war with a formal case, although that, you know, -- you can't always rule that out.

I think that's the -- that was the gist of the kinds of things we were talking about and really the five areas that we laid out that we had concerns, and I would defer to Jim Ellenberger, who was on the call with us, to add to that.

MR. ELLENBERGER: As usual, I concur with my chairman. We discussed this, and Don mentioned one of them, discussed the other aspects of claims processing that are the purview of other subcommittees or committees.

One of them is cooperative arrangements with state agencies, a key ingredient to successful processing of claims. Another one is sort of contractor/insurer relationships, and then obviously the role that the physician panels are going to play in successful claim processing arrangements.

But we were quite appreciative of the spade work that the department did on this issue, and we're anxious to see some specifics as we move forward probably quickly in the near future.

MS. SPIELER: Why don't we move on, Iris, and have you just talk a little bit about the State Agency Relations Issues that were discussed, and then we'll come back to a sort of -- try to put this conversation together?

State Agency Relations

MS. POST: Our committee, the Agency Relations Committee, met this morning for about two hours. We went through the information furnished by the Office of Worker Advocacy established.

We were able to agree on a purpose and our scope as outlined by the office, basically that we'll advise on issues relating to state workers compensation systems, and the goal is the successful implementation of this statute that we're all here about.

We kind of went through the issues that were described by the office, had lots of discussion on exactly what the memorandums of understanding or agreement would be between the federal and state government, and we basically agreed on four different items, thanks to Les pushing us at the end.

(Laughter)

MS. POST: We agreed that we're going to identify what we see as roadblocks in each individual state. We discussed about any circumstances where the state might intervene in a particular case or might not. We talked about a lot of the issues. We talked about today about to deal with people with both a state and federal claim, how processing one might impact the other as well as the trigger for both.

We talked about a system to provide information, basically a pre-claims state. We wondered what -- we thought we were going to have to develop some kind of strategy on denying claims both, I suppose, at the state level and the federal level that might encompass both, and then we've talked about a little bit about memorandums of understanding.

Our discussion centered around kind of a general feel-good kind of memorandum of understanding to the governor in every state, saying the governor agrees that his or her workers compensation administration or administrator needs to work closely with the DOE and DOL and others to implement this legislation, and then also more or have in place of that a more particularized memorandum of understanding with that specific state's requirements and reaching an agreement between DOE and that state on how state claims are going to be handled.

MS. SPIELER: Anyone on the subcommittee want to add anything?

MS. RUDOLPH: I think that we actually had some very thought-provoking discussion in the group about where there's likely to be problems within the states, and what the differences are between claims that are accepted by contractors and claims that are not accepted by contractors, areas where states can actually do policy or regulatory changes to impact how the claims process works versus areas that require statutory changes in states and just, you know, want to emphasize this concept of really -- I -- you know, I'm not sure before even any MOUs with the states trying to identify what the barriers are going to be in the different states that have to be addressed, so that the MOUs can start to address some of those issues.

MS. POST: And if I might, Emily, also, the committee -- the subcommittee talked about -- Kate Kimpan is our agency person who's assigned to this subcommittee, and Kate has been instructed to go ahead and start doing some drafting of MOUs, which could be used as a template for some of these states, and, so, if nothing else, it ought to at least get us started on what kind of elements and issues need to be included in those particularized agreements.

MR. BODEN: One issue that came up was whether we were talking about a single MOU or a set of memoranda, an initial one, that would sort of start things going, and then maybe some follow-on memoranda to cover other issues, and I think Emily expressed a concern that we be sure to not put states in a position where they feel like they've had an agreement, and then they're going to have another one, and they're going to have another one.

So, I think part of the issue was how we were going to -- how DOE was going to structure the discussions and having clear going into the process what the goals of the memoranda were.

One set of issues, I think, had to do with making as sure as we could that there were no road-blocks to accepted claims being paid in any state because of conflicts with the state statute or the ways that the state had -- the policies that the states had implemented, and I think we had some understanding about going -- what kinds of issues those might be.

The second set of issues that we had a much more difficult time with was whether there was a useful role for the states in structuring a process that would help with claims that -- where the medical panel had approved the claim, but the claim had still been denied, either by a contractor or an insurer, and, for

example, what the role in the state process would be of the medical evidence that would be developed by the panels. So, there are a lot of specific issues there.

The other area, I think, that we talked about, and we had some agreement about, was possibly including in the memoranda a role for the state agency in the process of informing or assisting workers who have questions about the state process, to -- and then, I think there were questions about whether the state agencies should be doing that or whether the DOE should be putting out a request for proposals and choosing among groups of people.

So, I think that was -- but that was another issue that was discussed.

MS. SPIELER: I would just say that as a member of the subcommittee, that there was this kind of interesting conversation that mirrors the one about what happens if it gets filed at DOL? What happens if it gets filed at DOE? A third point of entry for workers would -- into this entire system may be at the state agency level, and the question then became, is there some way for some system to be put in place that would meet the goal that I think both Vikki and Don have articulated, which is, you know, the single form, the single process.

Is there some way through memoranda of understanding to set up a system whereby claims filed at the state level are in some way forwarded to the central federal point as well for reviews, so that -- because I do believe that people just aren't going to know where they're supposed to go, no matter how much you work at telling them it's going to be confusing, and somebody will say it's compensation, and what people do when they hear it's compensation is go to the state comp office or file a claim somewhere in the state.

MR. BODEN: I would just follow up with one other point about that, was that the memoranda -- I think we talked, also, about the memoranda possibly including agreements about how the state would set itself up so that it could identify which of the -- you know, because somebody may just file a claim, and they'd want to have a system in place where the state could identify which claims were appropriate to forward to DOL or DOE, and to have a system whereby perhaps specific people within the state had specialized knowledge, so that -- but that other people knew to forward claims to them, if it looked like they might fall into this category, and that also that memorandum might include some possible funding from the Department of Energy to pay for additional resources that might need to be used in the state in order to do that, but that's --

MS. SPIELER: Let me make a suggestion. Needless to say, this led to a conversation about what would -- in what situations contractors or carriers

might be inclined to not accept claims, which sort of took us over into a different subcommittee's arena, which is what -- which is an area we have not explored adequately, I think, either at the subcommittee or the committee level.

Let me make a suggestion here, and --

MS. TAYLOR: I have to leave.

MS. SPIELER: Okay. In view of Andrea's imminent departure, I'm turning this over to her.

MS. TAYLOR: I just wanted to say that I'm sorry I have to leave now. I have another meeting this afternoon, parent-related/school-related. So, unfortunately, I have to leave to get back to that meeting, but I will be back tomorrow morning.

MS. SPIELER: Don, did you want to --

MR. ELISBURG: I wanted to comment on the Contractor and Insurer Issue when you --

MS. SPIELER: Okay. Actually, I wanted to hold that one aside for the moment and focus in on the many issues that are already on the table as possible.

It seems to me that there -- we have some themes emerging, and that we should explore them and explore them with Paul and the rest of the staff in terms of where we are on this.

I think that there's general agreement, and I hear it from staff as well, that outreach -- the outreach net should be cast as broadly as possible, and that it's an issue of implementing the ideas, but that the staff is essentially open to any mechanism for outreach that would reach people who might be appropriate future beneficiaries of this program, and that there's been a sort of articulation and re-articulation of the need for a kind of a process diagram here, that we really feel as a committee that we need to be quite concrete in how we see these claims actually happening, and I would say no matter where they might enter the system, the system used as broadly as one can imagine, and that as part of that, there's been an iteration and reiteration of this need for a single point of entry or at least a single designated office that's going to be the sort of triage office for all of the claims, so that if there were a mechanism for them to be referred in by the state agency or if they came to DOL or DOE, wherever they end up initially hitting, that there's a place which gets them all and figures out where they go, and that as a

component of that, that there be kind of a minimization of duplication of inquiries, developments of records, and so on, and to the extent possible a single claim form.

Let me just get through it, and then I'm going to open it up for -- so, -- and that the single claim form be as broad as possible. So, to the extent that it might be possible using the IAIBC's guidance to use a form that also is adequate for state filing, that would be terrific.

Then there's a whole additional arena of assistance to claimants that I think has come up in a variety of different ways. How the local office is going to function, claims development, tracking down records, exposure records, employment records, death certificates, medical evaluation pieces, and all of that to be done in a mechanism that, at least in my personal experience, usually isn't done in a real ombudsman kind of way for claimants in federal programs, and, so, it's -- that one is really, I think, more a creation of a new beast than perhaps we've been giving it credit for.

So, I hear those kinds of echoes of those themes over and over and over and over again in our conversations, and what I'd like to do is go through them and figure out what advice we can give to the department on moving forward within this framework, unless you really -- unless there's a debate about the themes that I've articulated.

MR. BLEA: You know, along those same lines and having some conversations with Peter and Doug, I think what we're first looking at is do you -- if an individual claims with DOL or DOE, you know, is it retroactive or does it have to be retroactive with DOL?

I think we need to get that answered because from my understanding, the contractor who's going to be out there at these outreach places will be the same -- one and the same, DOE/DOL.

Also, some of the -- and let me just give you all my concerns, but from my understanding, also, these people at these outreach places will be assigned 100-200 cases, whatever the case may be, and maybe Doug could elaborate a little bit on dealing with the Black Lung deal and how they did it.

But people will go to the same person, you know, to deal with the same person because a person will be assigned their case until it has to move forward from there.

So, some of the questions have been answered for me, and I don't know if for the whole committee, but the process starts as where do I go to file my claim, and do I have to file it with DOL in order to be retroactive, if I'm entitled to compensation?

I believe that DOL is saying the outreach will be with DOE/DOL, that we're one and the same. Whoever you file it with, it's still going back to the same person, and as far as the recordkeeping, I believe that DOE is probably going to be the one, should be the one in position to help the person get their records from the lab, the contractor, whoever they may be, and help them get those.

Also, I just have one question or two other questions, and then I'll shut up here. I think last time we had discussed because some of these people who were claiming or were going to put in for claims are going to have to show a past history of where they worked, whether it's a DOE site or not, for them to say no, this is not related/yes, it is related, and we have just a very little bit of discussion, if I remember correctly, that trying to utilize the social security system to get their records, and I'd like to see that come into play in our discussion before we leave today or tomorrow because we have time for these people or to put it out and say, okay, if you're going to file a claim, you might need this whole file now with social security.

Then when you put your claim in, you have your work history there, and also my other question is, on the workmans comp on the local level, Iris, is there any feeling of the people that we're saying we want or we'll have to refer to the state level, that they haven't already put in a claim with the state level and been rejected?

MS. POST: I think we talked about this at least at lunch today, and I think it depends, and some have, and there's some res judicata issues with that in some states. So, if they have already put in a claim, say, several years ago, those folks may still be precluded from filing a new claim just because of operation of state law.

Now, if there is -- if a contractor is agreeing anyway to pay the claim, and if the contractor -- and I don't know if there's subject matter jurisdiction, and the agency would not be allowed to even look at the claim, but we have -- you know, if it was in agreement between the contractor and the former employee or the employee that that claim be paid, our agency wouldn't care.

If there was a prior case that wasn't compensable, we wouldn't care if that was -- in fact, we would encourage that to be paid. So, -- and the

circumstances that I understand that were coming into the state door is the circumstances where the contractor or DOE has waived all of its defenses, perhaps that's another defense that could be waived. I mean, I'm not sure. At least in our state, you can use that as a defense.

MS. RUDOLPH: I think this is a good example, though, of where we really need DOE to do some more leg work with each state on these various, you know, in some cases quite complicated legal questions.

If a file has been claimed -- has previously been denied, and then the contractor agrees pursuant to their new agreements with DOE, that DOE will pay, when does that payment start? Does that mean they pick up payments starting from the time the claim was previously filed or only starting from, you know, some other date?

I mean, there's a lot of complicated questions here that I think have to be resolved before we can enter -- really enter into MOUs between states and DOE about how things are going to work.

MS. POST: But I see that as an agreement between the contractor and the employee or former employee. I don't see the state having to get involved in that at all.

MS. SPIELER: Unless there's some preclusion in the state law that would prevent it from occurring.

MS. WELCH: Tell me if I'm wrong, Iris. I mean, if we're dealing with a group of employers that are self-insured, many of these claims can go through and be paid without the state -- the state would be notified that a claim was filed, but the state would have nothing to do with determining whether or not it was paid. So, it's more the issue that what you talked about before, how, if there are certain defenses the contractor can use, and if they do, then the claimant takes it to the state agency for adjudication.

But if the contractor agrees to pay, many of them wouldn't show back up, wouldn't -- the state wouldn't really have a big role to play in that.

MS. KIMPAN: It's Kate over here. The state -- this is Kate Kimpan. The -- in a state, even if I'm covered by self-insurance, the state agency has the same role in administering my claim. They do the same calculations about my benefits. They do the exact same thing as they would if I were covered by private insurance. So, you're not relieved of that.

MS. SPIELER: I think the issue that is more the question of whether or not it's contested or not, and if the claim is accepted by the contractor or carrier, now then, depending on the way the state functions, it may not be an issue of adjudication at all or at least the compensability component of it may not be an issue of adjudication.

MS. KIMPAN: My point was simply that whether self-insured or private carrier-insured, the state's going to have the same role for the claimant.

MR. ELISBURG: Without getting into the subject that I don't want to get into in terms of -- well, it's essential in this regard.

In looking at this notice that we had in our package of acceptance of valid workers compensation claims, to a large extent, that may deal with the issue of current claims for current employees.

There's a vast area there of current claims for former employees or old claims for older employees, where the contractor may or may not be in business. I don't even know who has the responsibility, who has inherited all of the responsibilities from site to site and subcontract to subcontract, and it seems to me that one of the things that we didn't really ask Paul but perhaps has been addressed is when you put this package together with the state that we're talking about, what is the package that you're putting together for the employer who's going to have to pay this claim?

In other words, I think there's a block here that's got to go with this -- it's not just the memorandum of understanding with the states. It's what are the elements that the contractor's going to be presented with that's going to tell that contractor or subcontractor or sub-subcontractor you are required to pay this claim?

There's a piece, there's a little block here that's missing. That's all I want to say.

MR. MARTINEZ: This is Len Martinez. I want to add something to that. One of the -- and I'm with Kaiser-Hill. We have a contractor-controlled insurance program which is just like a commercial program that you would have as a commercial company, which is unique in the DOE system, and over time, you may be dealing with multiple carriers, and the carrier will get involved as to whether or not the claim should be paid.

So, we may all decide that the claim should be paid, and the carrier, who's on the hook for it, won't agree with us, and how do you deal with that?

MS. SPIELER: That was precisely the reason that I thought maybe we should hold the issue of the contractor/insurer question aside. I absolutely agree that the -- it's far easier to deal with the current employees of current contractors who are self-insured than any other insurance arrangement or any past employment relationship, and let me make a suggestion.

I'm struggling a little as chair, I will admit that, and, so, I will take guidance, but it seems to me that there are central issues of claims filing and processing that are primarily federal in nature but also involve claims that may come in at the state level and need to be folded into federal process, and then there are the issues of the state processing of the claims and the relationship of that to the acceptance of claims by contractors or carriers, the inter-relationships between the contractors and carriers, the contractors and the former contractors with whom they may have their contracts with regard to former employees.

My suggestion is, and again I'm perfectly willing to be overridden on this, but my suggestion is that we focus for right now on the sort of single claim/single process, how are we going to integrate the federal piece, and that then we move on to the insurer/contractor state-related adjudication pieces that are interrelated.

Is -- does that make sense to people? Okay. So, bringing us back a bit into the sort of discussion of the -- what I see as the kind of federal piece on this, I'd like to sort of take comments on that and see whether we can make some progress on where we are on it.

Les?

MR. BODEN: I have a suggestion about one way of thinking about this that might be helpful, because when I start to think that way, I get confused very quickly.

I tried to imagine myself as a potential claimant in the system and imagined sort of what would -- what the steps would be for me to get from thinking that I might have, let's say, work-related lung disease of some sort, I don't know what, that would, you know, -- I saw the tv or I got a letter or something, and I go to the state agency, and I say, I think I might have a claim. I know I worked for a certain employer a number of years ago in the DOE complex. What do I do now?

It seemed to me that that -- that there probably are a lot of things in the process -- that if one could sort of think through what -- from the sort of worker's eye point of view about what might happen, that that might be a useful way of thinking about what the claim filing process should be.

For example, I thought, well, we don't have any medical evidence here at all about what the nature of this is, but we don't know if it's, you know, chronic bronchitis or asbestosis or, you know, whatever. What do I have to do as a worker, and how can the system make the process not totally burdensome for me? Because there are all sorts of things that have to happen, you know.

You have to find out actually, you know, what the person's work history was. Presumably there has to be a medical exam. Who's paying for the medical exam? How does the worker find the doctor who's the right kind of doctor to give the exam? That's not, as I understand it, what the medical panels are doing. They're taking previously-developed evidence and evaluating it, right?

So, you know, what happens to the person who's -- you know, what kind of advice or direction or help is this person who's now coming initially into the system being given, and how does -- if we think about it that way, how does that structure how we think about what the system needs to be like? So, what do I do, guys?

MS. SPIELER: Paul, have you thought about it from that perspective, and what are your thoughts on that?

DR. SELIGMAN: Yes. I have thought about it. Well, let me take what I hope will be the simplest example, which is someone shows up at our Oak Ridge -- the outreach office that's been established there.

I'll take that as an example because there are all sorts of individuals around the country, at all these atomic weapons employees, you know, locations and beryllium vendors and others who may not have access to an outreach office.

But if Les walks in the door, you know, certainly the first thing we're going to want to do is, you know, if the -- if he feels that he has an illness that was related to his previous employment at the Oak Ridge facility, is to assist in filling out the claim form that's been developed.

My sense actually at that point in time is that we would assist them in filling out two claim forms, one for the Department of Labor program and one of the State of Tennessee, at that same sitting, and then to -- using that

information to go forward and verify his employment history, any exposure information or medical information that may be stored at the site, if he has seen his own personal physician or had other evaluations, asked for medical releases that would again allow us to pull together all the information necessary to send forward to either the Department of Labor or to the State of Tennessee to file a claim.

If he has some questions as to whether this illness is work-related or he doesn't really have a diagnosis, I would envision having maybe a list of referral physicians that he might consult in the Oak Ridge or Knoxville or Tennessee area who might be able to assist him in further refining his medical problem.

MR. BODEN: And who's paying for my visit for this diagnostic work-up?

DR. SELIGMAN: We hadn't contemplated that. There's the -- my sense is that the only thing that we have in place at the moment, of course, is a former worker program in Oak Ridge, and I think it would be in that site certainly

appropriate for you, if you so choose, to, you know, visit the two programs there that might be able to, you know, do a diagnostic work-up.

But at present, we haven't -- to be honest with you, have not contemplated nor have we -- although we recognize the importance and need for such a medical assessment, given the potential size of the number of people who might need such an evaluation, not only for DOE but for all of our atomic weapons employees and beryllium vendors across the nation going back through 1943, we hadn't at this point contemplated paying for those kinds of medical work-ups beyond where convenient making referrals to our existing former worker programs.

MR. ELISBURG: Now, it only took till 4:00-4:15 to get to the heart of this meeting. The fact of the matter is, Paul, it seems to me the statute is clear in terms of the assistance required to help develop a claim.

I think, to the extent that a worker comes and says I worked there, I'm sick, am I eligible, and that will then require a medical evaluation or examination to determine the work-relatedness, that's in the hands of the government to find and pay for.

As far as I'm concerned, the people I'm representing here, there's no question that they should not be put to the burden of having to go find doctors to

find out that you caused my cancer. You know, that's -- now, you may not have that view or you may not have that money, but that's what this program is all about, and to the extent you're going to require people to go out and chase doctors themselves and pay for it themselves, I think you're headed back towards a losing proposition of whether this program will work for you.

DR. SELIGMAN: I happen to agree with you. But on the other hand, because it was clear in our Public Health -- the public meetings, that access to good, you know, work-up was clearly an important issue.

I am simply reflecting, since it's not specified in the legislation, the degree to which we would provide assistance, and clearly one model is to, you know, provide the nature of the assistance that I described, you know, short of such a medical examination.

MS. SPIELER: Is it -- would it be necessary in every case to send people -- this is a question that I don't only address to Paul but to others who may have more expertise than I.

It would seem to me that for those people with, for example, cancer diagnoses, that they are already seeing physicians, and they have full medical work-ups already. There may be causation issues that would be appropriate to refer to the medical panel with regard to their exposure, that not everyone who comes in at the point that we're talking about now and is sitting in that outreach office in Oak Ridge, Tennessee, is going to need referral for full medical evaluation in order to create an adequate file for their claim.

Now, that may be less true with people with breathing disorders of varying levels of magnitude where full evaluation may not have been done, but I would like some thoughts on people -- from people and in particular people who've handled claims or done medical work on claims as to the extent to which at this point, when someone walks in, there would be a need for full referral for a medical evaluation, and what it might entail.

MS. RUDOLPH: We talked about that a little bit in the Medical Panels Group because we figured that there were definitely going to be people who had not had access to adequate occupational medicine evaluations that would need referrals to them.

We did not get into the issue of who would pay for those, but we did talk about there ought to be a mechanism in the intake phase, wherever that might be located, to make appropriate referrals where there was a need for it, and we also talked about the potential need for, you know, a medical panel to say this

person needs a fuller evaluation of an occupational medicine clinic, and here's where they should go to get it.

So, I agree that, you know, there are going to be cases at both of those levels where there needs to be a medical record developed that hasn't been to date.

MS. WELCH: It -- I look at it in a couple of different ways. The diseases that are specified in the federal legislation, there's a process by which the NIOSH or the medical panels will make the determination of causation. So, it's a little bit easier.

If they've got a diagnosis, someone's going to put together their exposure information, and, so, for the cancers and beryllium, I think that's pretty easy. Silicosis, it may be some people have it, they haven't reached the diagnosis yet, but I don't think that's the issue.

I think it's the ones that are going to go to the state, and generally if someone I'm treating wants to get a workers compensation doctor has to say not only do they have this disease, but they have to say it's work-related.

So, you need more than just medical data that they're sick. I mean, if you have plenty of data that shows the person has emphysema, unless we change the process, you still need someone to say that emphysema is work-related, which we don't need their treating doctor, if they've got one of these radiation-listed cancers, we don't need their treating doctor to say it's work-related, but for ones that don't fall into the federal program, we probably would.

I don't know that noise-induced hearing loss we would have to, but for cancers or lung diseases, we -- I think we would have to.

MS. SPIELER: I'd actually like to ask a follow-up question. I thought that the reason we had medical panels was so that the medical panels would put together the exposure and the diagnosis exactly on those claims, that the medical panels are actually not looking at the cancer and beryllium claims.

So, I guess I'm a little confused right now --

DR. SELIGMAN: Only inasmuch as a cancer may be related to a toxic exposure as opposed to radiation.

MS. SPIELER: Okay, okay. But maybe a little clarification for me and others as to exactly the role of the medical panel versus the need for a full occupational medicine work-up would be helpful.

MR. MARKOWITZ: Normally in workers compensation, you don't submit a claim until a physician has said that it's work-related, and then you don't have that physician review mechanism entering the system, and it's disputed or not, and then it goes from there.

Here, we have built in this physician review mechanism by competent occupational medicine people, and in combination with the lack of occupational medicine people at most of the sites. In fact, the trigger for a claim need only be that the person -- the worker himself or herself thinks it may be occupational, and it would be very helpful if they had a diagnosis, not an occupational medicine diagnosis, but a diagnosis that their personal physician gave them.

Then if that's the trigger, they enter the system, and then the physician review panel makes the determination of whether it's work-related or not. They don't therefore have to see an occupational medicine doctor in the first instance. I don't know if that's the way it's going to work, but it's a reasonable scenario.

Emily?

MS. SPIELER: That's why I was asking the question about the extent to which medical evaluation referrals would be needed.

MR. ELISBURG: Can I go after the statute? Because I do not know the scope of Section 3631, but Section 3631 of the statute says, "Assistance for claimants and potential claimants". All right. "The President shall, upon the receipt of a request for assistance from a claimant under the Compensation Program, provide assistance to the claimant in connection with the claim, including (1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis or cancer, and (2) such other assistance as may be required to develop facts pertinent to the claim."

That, to me, says I walk in and say I'm sick, maybe, or I think I might be sick or I think this happened to me in your place, it is your obligation to take them from soup to nuts in the whole process, including such medical evaluations as may be required to deal with the work-related illness.

As I said, I do not fully understand the interpretation of the scope of that section, but I've been reading this section for six weeks now, trying to, you know, argue the issue that it just seems to me that the Congress was clear that it's your obligation to pick up these initial costs, and that's a bit different than perhaps the typical workers comp program where you come in having picked up some of the costs.

On the other hand, you know, and that's -- I'm throwing that out really as my concern here in the context of Paul's observation that it wasn't clear they had the authority to do this.

MS. RUDOLPH: I think from the medical standpoint, there's clearly going to be cases where somebody thinks, gosh, I, you know, worked for Brush Wellman, I'm not sure if I've got some illness or not. They go to some doctor in Delta, Utah, or, you know, some place else. He doesn't know about what constitutes adequate diagnosis for beryllium disease, and that person's going to need a referral before they get to the point of a diagnosis.

I can easily imagine the same thing with somebody that's got some, you know, non-specific lung disease, where, you know, in fact, there's a lot of doctors around who wouldn't know a case of silicosis no matter what. It's not something people see all that much now.

So, they need a referral to somebody that can make that diagnosis before, maybe before/maybe after, I mean, at some point, you know, whether it's at intake or when it gets to the medical panel, and they say, you know, they haven't had the work-up that let's us make a decision.

MS. POST: Emily, I was just going to say that I think I agree with Don. I think the purpose of the legislation was to open doors, and it almost seems to me as though there's a presumption of almost in this legislation of work-relatedness, and that basically if the government wants to or the contractor wants to, you have to establish that it's not work-related.

So, it seems to me that you are going to have to have those examinations, you know, to show one way or the other, if there has not been done -- any examination done before.

The other concern, I guess, I'm just going to throw out, we talked about at lunch, is sometimes timing is everything. The one concern I would have for some folks is they may claim too early, at least at the state level, because you may have compensation that's not available to you by making an early claim that you might get later if you're disabled, and there's some tricky statutes involved

there, and, so, you know, you may not want -- I mean, some of these people would be better off waiting till they are actually disabled or actually need medical rather than getting a preliminary determination made.

MS. SPIELER: Let's let Peter have a turn here.

MR. TURCIC: That's a very good point there that I think Shelby was alluding to. Under the federal program, there is no need to show any disability for any of the diseases.

So, you know, if you automatically filed, you know, if you automatically had a federal program file a state claim, you could be in a situation where you have an individual who is being compensated because under the federal program, you only have to show that you're a covered worker, and that you have a covered disease. That's it.

There's no determination of level of disability. So, to --

MR. BODEN: I thought that for silicosis, it had to be disabling.

MR. TURCIC: No.

MR. BODEN: Can somebody clarify that?

MR. TURCIC: It's -- it only requires silicosis at a level of 1/1 or above. That's -- there's no determination of degree of disability, and, so, if there was, you know, -- that automatically triggered a state filing, then you could very easily have an individual that, you know, filed for the federal, received it because the disease was there. They were a covered employee. If that automatically filed a state claim, there may not be a disability at that point in time to the level to receive state benefits, and then that may preclude, you know, future filings.

MR. ELLENBERGER: I'm glad to hear you say that, Pete, because Section 3628 of the Act says, and I quote, "Except as provided in Paragraph 2, a covered employee or the survivor of that covered employee, if the employee is deceased, shall receive compensation for the disability or death of that employee, from that employee's occupational illness, in the amount of a \$150,000", and this has been the subject of considerable consternation by many of us who were involved in this legislation, because that language wasn't in the --

MR. TURCIC: It's only in that section, though, and if you look at the definition of diseases, --

MR. ELLENBERGER: That's right.

MR. TURCIC: -- it --

MR. ELLENBERGER: It's very --

MR. TURCIC: -- defines the diseases as the presence of.

MR. ELLENBERGER: It's very important that we not get bogged down in the arguments, interminable arguments that exist in state workers compensation over disability, because if we do that, then we've failed.

DR. SELIGMAN: May I make one brief comment? Sounds like this discussion is ripe for another subcommittee, and I say that because basically the question before us is to what -- to whom shall we offer medical examinations as part of this process? What criteria should be used for making such referrals, and given the fact that this -- our responsibilities not only extend to current and former employees but also to those who worked at beryllium vendors and atomic weapons employers throughout the United States and Puerto Rico.

Clearly we're going to need some advice on how to develop the appropriate network of physicians who can conduct those examinations, and, so, again, it sounds like an issue that to date has not been on our plate, but given the sentiment of the committee probably should be.

MS. SPIELER: Yes, I -- we take that definitely as a serious issue, and I think before we leave tomorrow, we should address it and decide how we're going to try to give you some feedback on that issue.

MS. WELCH: I just want to make a comment on what Pete was saying about, you know, an automatic filing with the state, because there's a little bit of between a rock and a hard place.

A lot depends on -- if the contractors are not going to step in and enforce the statute of limitations, yes, you could wait to file, but if the statute of limitations starts when you knew or should have known you had a case, filing with the federal program obviously says you knew or should have known you had a case.

So, you're kind of like -- it's sort of like asbestos-related pleural plaque, which I think a lot of state compensation systems have dealt with in some way or another, where people have a screening examination, they get a diagnosis

of something that's not disabling, but you don't want to preclude them getting compensation down the road.

So, I think it's an issue that has to be dealt with in these memorandum of understanding or the contractor relationship, but there's not a right answer one way or another because you're either -- you have to stop the clock ticking at one end or stop the clock ticking at the other.

MS. SPIELER: Yes, I agree with that, and it varies a lot on whether someone has any continued exposure, which -- and, so, I do think this comes down to some of the very state-specific questions that need to be asked about how the state functions around these issues, and it comes up against this question of what we're going to do about contractor acceptance or non-acceptance, and when I say contractor, I'm thinking /carrier acceptance or non-acceptance of claims at the state level.

Rick?

MR. BLEA: Just one question. Did we get an answer to Don's question? Are we in agreement or not in agreement or do we need legal counsel to give some interpretation, that anybody who puts in a claim is entitled to -- if we're going to send them to see a doctor, a physician, for their condition or to evaluate their condition, is it in fact that under this program, we will pay for it, not them?

I think we need to answer those questions because before we can refer anybody or tell them to do anything, we need to know, you know, -- they're not going to want to pay for it, and in a lot of cases, they're not going to have the ways and means. If they are actually already sick, their insurance might have already expired, don't have it, you know.

But I think we need to go back to that. I tend to agree with Don, the way it's written here, that yes, we will pay for your medical examinations to determine. Now, I may be wrong, but I tend to side with Don on this, but I think before we go any further, I think we've got to start at Step 1, okay, before we keep talking about other things. Let's determine where we're going to go or what we're going to do.

MS. SPIELER: Let me just ask for clarification from Rick and Don. Are you suggesting that DOE would be the payor of first resort or the payor of last resort on these evaluations?

For example, a fair number of people may be Medicare-covered, and to some extent, particularly if there's active disease, these may be covered encounters.

So, the question is, are you suggesting that the medical evaluation done for the purposes of the program would be paid for by DOE as a first payor? This is truly a question of -- just an informational question.

MR. BLEA: I don't have the exact answer for that, but I do think that we always have to remember that why somebody would be going to a doctor that Medicare would cover may be a different physician that you would be sending them to for the kind of evaluation in terms of work-related, etc., that they may not be the same doctor, that the doctor you're going to for treatment may in fact not be the doctor that you're going to for these evaluations, you know.

Beyond that, I don't have a sense as to who's the first dollar payor of the government's money.

MS. HATFIELD: Also, I think we have to consider that when you're sending -- when people are going to different doctors, different doctors, different doctors, sometimes the insurance companies bow up, and they just won't pay because we went through that personally.

I mean, we had tons of unpaid bills that we finally got resolved, but it was a year later, and a lot of threats going on before we got it done. So, even though -- even maybe your -- like with Martin Marietta, say, at Oak Ridge, and you have their insurance. They don't want to pay, and if they don't pay, Medicare's not going to pay.

So, what do you do when you send these people out for re-evaluation? What do you do?

DR. WAGNER: I don't really think that the critical issue is sending people off to doctors for a determination of causation. That's going to be done by the medical panels, that what you want is a sufficiently-complete competent medical record that is -- that has the information in place that permits the establishment of a diagnosis.

The medical panels are responsible for gathering the information of health records, of informing themselves of the exposure, and they're the ones that are ultimately going to make the determination as to whether or not there's a relationship between the exposure and the health outcome.

MR. ELISBURG: But, Greg, that's true, but it was my understanding that the medical panels are not going to be doing the medical examinations.

DR. WAGNER: Right. Well, let me --

MR. ELISBURG: They're going to be working --

MS. SPIELER: Let me intercede and see if we can sort of clarify this. It's -- I tried this before, but maybe some of us are not -- still not reading from the same page, and I may be wrong about this.

But people need good medical work-ups for this program. They may or may not be getting those from their treating physicians. That good medical work-up may not need to include a specific occupational diagnosis and therefore may not need an occupational medicine clinic which may not exist in the locality where this person is anyway, but rather what they may need is a good internist or subspecialist who can do diagnostic work-ups in that field, who can put that kind of medical record into the system, so that the medical panels can put it side-by-side with the exposure information.

That makes both the -- it seems to me, the referral's easier because in most areas, I can think of some where there may be some argument about this, but most areas, there are competent physicians who can do that carefully, if people aren't already seeing them, and also to some extent, the payment issues may be slightly different because it's a medical work-up, not a sort of expert witness kind of work-up, and, so, you know, but I still think that the issue that's been raised by Rick and Don is a serious one, which is, that if people need that, is DOE going to guarantee payment for it?

The niceties of -- I will take off the table the question of who's first payor or who's last payor or how that gets worked out, but the bottom line question, I think, that Rick and Vikki and Don are asking is, if that kind of medical work-up is necessary, is DOE prepared to commit to paying for it, and, if so, then the issues are only the follow-on issues, Paul, that you asked us to resolve. Who, when, what, and so on.

DR. SELIGMAN: I wouldn't limit it to the DOE. I guess the question is, is the government prepared to pay for it, and is -- are there other possible agencies with expertise in public health and the delivery of medical health care who might be more appropriate for this task than the Department of Energy?

MS. SPIELER: Is the government going to make a commitment to pay for this? I'll accept that as the question.

MR. ELISBURG: And this is also true of the Department of Labor claim. I'm not sorting out these claims here.

MS. SPIELER: We have some other people who want to get into this conversation, and I think we should let them. Linda?

MS. RUDOLPH: It seems to me like there's really two -- there's two categories. There's people that go a doctor, and they get the diagnosis of a covered illness, where then they have the diagnosis, and the question is no longer do they have it or not. It's is it -- do they have the right exposure, and that goes to DOL and DOL takes care of it.

Then there's all the people that have diagnoses that are of something different, and they go to DOE, and DOE's going to send those people and their medical records to the medical panel, and it seems to me like the medical panel then can determine do we have sufficient medical evidence to make a decision, or do we need development of the medical record, in which case the medical panel says we need to make a referral for more complete medical evaluation. It's not -- I don't think it's that complicated.

MS. SPIELER: Steve, you had your hand up for a long time. Did you want to --

MR. MARKOWITZ: Not yet.

MS. WELCH: Linda, I think there's one other group which is people who feel that they're sick and have not had much medical evaluation at all or have been to their primary care doctor without really any test, and I think that may be what Paul was saying.

I mean, at some point, you could say -- a subcommittee could say, well, the individual with the claim has the responsibility to do a certain level -- provide a certain level of medical documentation or not, but because then you could say, well, people who come in who worked for these facilities, we'll refer them for medical evaluation if they haven't had any testing, and I think that is somewhat of a difficult issue, but you will find people who have -- certainly at Oak Ridge, you'll find people who have been seeing a lot of doctors and don't have a diagnosis, too, which is another most difficult group, and we won't --

MS. SPIELER: Rick?

MR. BLEA: I'm just trying to get back to, you know, we're having a lot of conversation, good conversation about this, but, you know, according to the bill, the burden of proof was not supposed to be on the individual, right, and to me, unless I'm interpreting everything wrong, that's what we're saying.

We're saying that the individual has to prove that he's sick, and I'm saying, according to the bill, that says we will pay to find out if you are in fact sick or not.

MS. SPIELER: Actually I haven't heard anyone say that, Rick. So,

--

MR. BLEA: Well, what I'm saying is --

MS. SPIELER: -- I think what we're trying to figure out is exactly what the scope of the medical evaluation needs are, and the question is still hanging out there to Paul, I think, as to whether -- I mean, you reiterated the question, but you didn't actually answer the question as to whether or not you thought that the government was prepared to pay for whatever medical evaluations we ultimately figure out are necessary.

Most of this conversation is focused on trying to answer the question, the follow-on questions that you asked, who, when, what should it consist of.

MS. POST: I'm going to be very brief. Why should we treat this differently than any plain ordinary regular work comp injury? The employee goes to the employer, says I think I have a work-related injury. The employer says, depending on the state, okay, yeah, I will send you to these physicians that we normally use for an evaluation.

Why should this be any different? It's the same exact scenario, except that for years and years and years, DOE has not handled these like a regular workers compensation case, and, so, when I look at this legislation, I'm looking at we're changing our ways, right. DOE -- it's a new day, and we are going to treat these folks like a regular workers compensation case, meaning they're entitled to an evaluation at employer's expense.

MR. ELISBURG: I wanted to respond to something Linda was saying. It seems to me that the whole point of that section is requiring the agency at the early stage to be proactive in developing and obtaining the information necessary insofar as possible as to give this person -- develop whatever claim there could be to get this person paid, that it's more than being a post office for

information, that there is an affirmative obligation to assist them in developing the claim, which is typically what most agencies do not do.

Typically what most employers might do but never do, and, so, the worker is left to their own devices in developing the information, and what I was really thinking about was what we don't want in this system is for the claim to get to the panel and have the panel kick it back and say, well, we don't have -- we have insufficient information to make a decision.

At the first cut, early in the process, it's going to be up to the agency, that is the Department of Energy for want of a better agency, to --

DR. SELIGMAN: There are no better agencies.

MR. ELISBURG: -- go out, and when Paul was talking about getting the records and the medical records and all that stuff, to support a claim, then that to me includes whatever additional medical diagnosis might be necessary, at least to move it to a positive decision.

MS. SPIELER: Okay. I think we have a question on the table, which I guess as chair I'd like to know whether, Paul, you're in a position to answer or not, which is, is the government going to pay for whatever -- if we set up a subcommittee, and we come up with a system, which tells you when medical evaluation should be sought, and, you know, I -- there's clearly disagreement about when they should be sought, and it would need to be hammered out, but leaving all that aside, if we come up with a system, with your staff, of when medical evaluations to complete a file are going to be sought, is the government going to pay for them?

DR. SELIGMAN: I can't speak for my appropriations staff at this point. I can only tell you that, you know, if such a process is developed, clearly we'll have to develop a budget for it, and we will need to seek the funds necessary to support such a process.

I don't -- on principle, I have no objection to doing exactly what has been described here. I've believed in that, you know, all along. I've simply taken the position that on the amount of money that's currently budgeted in this fiscal year and next, that the resources have to date not been allocated nor has there been any anticipation for a nationwide program that would provide that kind of medical services, not to say that it shouldn't be done, but that we would, you know, -- again, the Department of Energy would have to get monies appropriated in order to do this. This doesn't come out of the trust fund that was established.

We need, just as we asked for monies to support the former worker program, for screening, we would need again to develop a budget and a sense of the scope of this program and all the pieces necessary to implement it, and then I would have to go forward with a request, and to date, we have not developed such.

MR. BODEN: I want to go back to the point that Iris made. Focusing on the state claims, which is what our primary mission is, there are some states, like yours, in which as a matter of state law and functioning, the employer or insurer is required to pay for medical exams that establish a claim, and -- but there are also some states in which the employer or insurer has no obligation to do that, and it's sort of in the workers court at the initial stages to pay for those evaluations or to find, you know, a doctor who may not charge them unless they win their claim or something like that.

It would be useful for us to know in the primary states of interest where that's a legal obligation within the state workers comp system, in which case, it's not a question, right. It gets paid for, because it's required, and in which case, it's not required, and where the worker might be left holding the bag.

DR. SELIGMAN: Washington, state of.

MR. BODEN: Complete sentences.

MS. SPIELER: Washington, the yes or no?

DR. SELIGMAN: Which category?

MS. SPIELER: Which category?

DR. SELIGMAN: It's my understanding that in the State of Washington, that the compensation system won't pay for such an evaluation if the physician feels at least on the initial determination that the condition may be work-related, even if subsequently it's determined not to be so.

I don't know if that's -- it's a big if, but it simply requires the physician to make that statement, that he thinks that the purpose of the evaluation is to determine the condition may be, you know, work-related.

MS. SPIELER: Part of the problem with this conversation, it seems to me, is that at least for those people who come in and say I'm sick, I don't know, they're not ready to file a claim.

DR. SELIGMAN: That's correct.

MS. SPIELER: And, so, it might be -- even in those systems where that payment might be made, it may still -- there may still be a need for medical evaluation prior to that point, and I think it might be appropriate for this committee to consider whether we would like to encourage in some way further movement by the department with regard to the payment of medical evaluations.

MR. MARKOWITZ: I wouldn't really want to see the employer refer people off for the expert evaluation. In many of these places, the experts don't exist or, if they exist, they're employed previously or currently by the contractor and aren't trusted by the workers.

So, I'm thinking about Oak Ridge, Portsmouth, Paducah, Idaho. They cannot get independent expert occupational medicine evaluations. So, what we're left with -- and a physician review panel is an excellent mechanism for dealing with that. So, then we're left with the question of whether they should get regular medical evaluations that DOE should pay for. I'm not sure what the boundary there is, what the -- a person shows up suspicious that they might have a disease that's work-related, and then they'd be sent off to an internist or a family practitioner for evaluation to find out what -- not what occupational diagnosis they have, just what their disease is, setting aside, you know, asbestosis, silicosis, the specific diseases.

DR. SELIGMAN: Remember this started off because Les thought he had a lung problem, right?

MS. RUDOLPH: Greg and I have been drawing diagrams. It seems to me that I don't -- I'm leaving aside the issue of somebody who says I'm sick and no doctor has been able to diagnose me, but even though I don't have a diagnosis, I think I'm sick from work. That's -- I'm going to put that aside.

I think the kind of questions that are going to come up, you know, where we really clearly need a process in place to start with, are things where somebody says I've a diagnosis of something else. My doctor says I have asthma. I have all of these exposures.

It comes into DOE, and DOE sends it to their medical panel staff. I mean, the medical panel's going to have staff, hopefully with some kind of medical expertise, and that staff's going to look at the medical record and say, I can't tell from this -- yes, I believe the person has asthma, but I don't have a clue what kind of asthma, whether or not they've identified specific asthmagenic

exposures, whether or not there's -- you know, this person has a history of cat allergies since age four.

I mean, there's all these questions that in fact do need more of a work-up, and the staff can then say there's an inadequate record before we send it to the actual panel of three physicians or two or however many we decide on, this needs to have a further evaluation and make that referral.

You know, I think the same thing's going to happen with some chronic lung disease. They haven't had the right kind of x-rays to really determine what's going on here. This medical panel staff can say this is a person that needs a medical evaluation.

So, I think there's some cases where we can clearly determine that somebody at DOE can, you know, before it goes to the actual medical panel, we're calling it medical panel staff review, determine that there needs to be a medical record developed.

MS. SPIELER: We're kind of stuck in a particular place, I think. Let me see if I can figure out -- help us figure out where we are, so we don't stay stuck.

We started out with a conversation about, okay, the person comes in, and they need sort of assistance in putting their file together. They need their employment history. They need their exposure history. They need their medical evaluation.

There's a question now. If they don't have adequate sort of medical information, what happens? And who pays for any needed additional medical evaluation? And I think that may be something that we would like to give some direction to the department about.

Perhaps we should hold it aside for the moment as one of the things that we want to think about a little and come back tomorrow with some very specific direction and move through this process a little bit more.

The person -- let's say we now have the person, and you've gathered the medical information you need, and you've gathered the employment history and the exposure history, and there -- we're in the easier situation, which is, they're actually in one of these outreach offices that you've actually set up and which you're working with cooperatively, presumably DOE and DOL.

Now, I'm struggling over, you know, all the people who work in these smaller facilities and aren't going to show up in a mean highly-trained outreach office or they're going to show up at a state compensation system.

What happens to those people? The ones who go elsewhere, other than to this primary site where we're all geared up with helpful staff?

DR. SELIGMAN: We've talked about a variety of mechanisms. Again, it depends on where they are. We've talked about going out and periodically, you know, setting up some, for instance, closed sites or some areas where the concentrations of workers and holding, you know, a few days a month - opening an office where people can come in and talk to us, but there will also be a way of reaching us simply through a telephone mechanism for people who have either no access to one of these, you know, helpful offices or no access to, you know, the outreach efforts that we make on a traveling basis.

There are going to have to be a variety of mechanisms to reach different kinds of people in different situations.

MS. WELCH: You know, as an example for that, I mean, it's not at all unusual when people are filing a disability claim, not necessarily workers comp, but a medical disability claim, they do it over the telephone with Travelers or Aetna or Unum, and they have a form they complete, and then they send out for the medical information.

I mean, there are some very good models for that, --

DR. SELIGMAN: Absolutely.

MS. WELCH: -- and then, at some point, when it gets too complicated, you need another way, but that would take care of many of the more straightforward claims, and, you know, I'd be happy to -- I'm sure you're familiar with them, but I'd be happy to help --

DR. SELIGMAN: Yes. Actually that's been contemplated.

MS. SPIELER: And then what happens to the claim in the way you're thinking about it in terms of the process?

DR. SELIGMAN: Those that are for conditions related to ones that are covered by the Department of Labor, of course, go to the Department of Labor. Those that may be both go to both the Department of Energy and the Department of Labor, and those that are Energy-related come to Energy.

MS. SPIELER: And then presumably, -- have you already assisted people in filing state comp claims or in some way set up a system by which that claim has been filed?

DR. SELIGMAN: We've assisted people informally to date with a variety of claims but not in a systematic fashion. It's basically sort of on a one-on-one basis throughout the complex. Individuals who have claims pending or at the various roadblocks along the way that we've been able to sort of clear but not in a systematic fashion.

MS. SPIELER: Actually, I'm thinking about when you have 20,000 people that you're working on and not however many you've got right now, but let me turn -- Don may have --

DR. SELIGMAN: We've not dealt with 20,000 yet. We've tended to deal with 10s and 20s.

MR. ELISBURG: Well, having dealt in the past with a half a million claims, I can tell you that the process -- what's troubling me about the question and answer here is not the questions nor necessarily the answers, but that I'm envisioning kind of the day in the life of a claims examiner, and where's the book, the instructional guides, the checklists, the directions, that -- the protocols, the decision logic -- I don't know how you use those big words, Greg.

But the decision logic of what are these people going to be doing at each stage, and how are they going to send it on, and what's go and no go, and all that stuff, and where's the book? You know, I would -- you know, where's the cookbook about how this is supposed to work?

DR. SELIGMAN: Clearly, there will need to be one developed. I mean, there's a flow chart and all the various pieces that will go with that. I mean, there is -- if you're asking, is there a book that has been developed to date? No, there is not.

MR. ELISBURG: Let me ask Peter.

MR. TURCIC: We're in the process of doing that, of developing procedures, how claims examiners would in fact develop claims, and, I mean, to date, we've gotten some records from Paul in order to develop not only the procedures but then the training for those claims examiners, so we could see, you know, here's the kind of records we can expect from an atomic weapons employer and so forth.

MR. BODEN: But again, just to try to get our focus, that's not the stuff that we're supposed to be working on. Those are the federal claims, and the question is -- but I think the question is a good one; namely, what kind of guidance is there going to be for the people who are handling the state claims, and that's quite important for a number of reasons, not the least of which is, if people - you know, if well-meaning people, who are handling the claims for employers or insurers, are not given very clear guidance not only about go/no go but about how far back the medical or indemnity benefits are supposed to be covered and how to deal with issues of partial disability or all these other things, then even if they're able to accept the claim, it may be another two years before the claim gets resolved and paid, as is not unusual in these kinds of cases in state systems.

So, the general idea of providing clear and specific guidance on DOE's intentions about how to handle these issues will be very important if they're just not going to get tied up in endless litigation.

MS. GANGI: I just wanted to extend this in terms of providing, as I said, the institutional knowledge of the Department of Justice with the RECA Program.

I know that when we met with Mr. Turcic's group yesterday, the gentleman who's developing the claims examination process spoke at length with our claims examiners, who were here earlier today, and, you know, we certainly could bring folks from Energy and Labor over to our office and sort of show you a day in the life of a file and walk you from station to station in our office and show you the system that we have in place and that's been in place for several years and has worked for us, to give you a model of sorts to base your claims examination process upon.

MR. ELISBURG: I'm particularly concerned in this regard that the stuff that Paul's been raising for some weeks now is getting a hold of the records, and how do you send people out for the records, and how do you even look at the records?

It's going to be atypical of a typical comp claim operation where most of those kind of records you're going to get from the employer routinely. The hardest part of the claims examiners here are going to be trying to help the claimant develop information that should be routine but isn't, like, you know, where did you work, and when did you work there?

MS. SPIELER: Who are you referring to as "claims examiners"?

MR. ELISBURG: Well, --

MS. SPIELER: Because it seems to me in the state program piece of DOE, DOE is an advocacy office and not a claims examiner office.

MR. ELISBURG: Well, --

MS. SPIELER: DOL, on the other hand, is claims examiners --

MR. ELISBURG: No. Let me change it because in both cases, as far as I'm concerned, the statute would call them claims developers. You've got -- you have an obligation to help somebody develop a claim.

Now, you're sitting there, and somebody's sitting in front of you, you've got to have instructions and a book and so forth of developing that file, and you're going to be developing the file for that person, and that, by the way, is not atypical of the FECA situation.

I mean, typically injured federal employees don't come with a completed file, unless it's the Postal Service. They, you know, come -- one of the postal unions. I mean, they come, they're hurt, and, you know, all that stuff gets pulled together.

MR. TURCIC: Don, we're looking at it in the sense that, you know, in comparing it to the FECA model, the agencies themselves help an employee develop that -- and file that FECA claim.

For -- because of the confusion that we got into when we started talking about this, we refer to the people that are going to be there helping to fill out the claims as intake liaisons, and then the claims examiners are the people who would be looking at and evaluating the information, you know, developed and submitted as a claim.

MR. BODEN: But could we try to focus on the state process? Because this is really the focus of this committee, and if we keep on talking about the DOL process, and we don't get to the state process, given the limited time we have, then I think we're doing a disservice --

MR. ELISBURG: Forget about the DOL process, although they overlap in the claims intake place, okay, which is where all this information's going to have to be developed.

It's the same issue in terms of developing the information for a claim for a state.

MS. SPIELER: Let me take us back one step. Okay? It seems to me that there is this issue of file development, and that file development will be essentially the same, and the -- at some point, there will be a decision made as to which of the programs this particular file is going to end up in or whether it's going to end up in multiple programs.

I'm still rather confused actually, and, so, it's all before this claims examiner at DOL. That's not what we're talking about here. The question is -- the original question that was posed that we come back to periodically in the course of the day is, is there a single office that's going to do this? A single place? A coordinated place? Whose direction is it going to be under, and then, you know, they need a claims development book, and they need to know when to order medical evaluations, and they need to know how to deal with the exposure information and employment history information and so on.

MR. BODEN: But it seemed to me that what Paul was saying to me, when I came to him, was that that was not going to be -- fall on my shoulders as a claimant or a potential claimant. It was definitely going to be done some place within the system, and then the question is, where, and how?

MS. WELCH: I thought of another sort of wrinkle that maybe these claims intake people would have to do, which is identifying which employer is responsible for the claim under the state system, because under the federal system, if they worked -- it will be more specified, but let's say I have asbestosis, and I worked for five different contractors when they worked at Hanford.

We're going to also have to tell the examiners how to file, and maybe they'll work with the state, I don't know, but we have to sort of keep that on the list, too, because in developing the employment record, they want -- it needs to be not just sufficient enough to show that they have a claim, but to not have the different carriers start to argue with each other about who's responsible or some process, and it could actually go into a memorandum of understanding that it's a shared process, and that may already be on your list, how we're going to deal with the different pots of money that potentially are involved.

MS. SPIELER: Okay. Linda?

MS. RUDOLPH: I'm feeling a little confused about this timing issue of when people actually file a claim with the state agency, because in our state, probably most states, any occupational illness claim is going to be denied initially, unless it's some special case, and this is a special case.

But this is only a special case -- if only becomes a special case once it meets the criteria in the legislation, i.e. it's been approved by the medical panel. So, in a way, it's not even clear to me that we want to have -- you know, we get back to this issue of should somebody file with the state at the same time that they file with DOE or should the state process not -- should we not even recommend that somebody go file a claim with the state until essentially they've gotten the affirmative nod from the medical panel or DOL that this is a covered claim?

MR. MARKOWITZ: If you look at the Fernald Medical Panel experience in '98-99, I think it was about a quarter to a third of all the claimants were certified as having occupational disease. So, it was the majority who did not have it. So, that supports what you're saying.

MS. KIMPAN: This is Kate Kimpan. This is in response to Laura Welch's question. I think the issue that you raise, Laura, is going to be controlled by state statutes. Each state statute addresses whether it's, for instance, the last injurious exposure, whether those risks are apportioned among the injurious exposure.

So, to the extent that we're interfacing with systems that exist and have attributes, the state systems are each going to say how the multiple employer situation ought to be dealt with, and I don't know that the claims -- you know, the claims liaison or whatever it was called.

MS. SPIELER: I was under the impression, and if I'm wrong, then we really do need to deal with this as a major, not a minor, issue, I was under the impression that if there was a current DOE contractor, that the expectation would be that they would pick up the claim and be reimbursed for it, even if it was the -- there would have been apportionment issues under the state statute, if the claim is accepted, and that would depend on the DOE contractor/insurer relations.

But am I wrong about that?

MS. KIMPAN: This is Kate Kimpan. Regarding point of entry, that's how DOE contracts are specified. If I'm a worker of a contractor that has a claim to file, once that contractor says yes, I accept Kate Kimpan's claim for a problem, they then go into the pieces of that state system that apply, and if that -- the person holding that claim, the payor right there has the ability to subrogate or charge that back to who they believe the injurious employer was, they'll do so.

So, they're sort of separate questions with relatedly-independent answers.

MR. BODEN: But that sounds okay, right? That was from the worker's point of view. As long as the current contractor is paying it, the worker doesn't care about the subrogations. So, it's essentially the same as if -- from the worker's point of view, if the current contractor were actually paying it out and not get reimbursed.

MR. SHOR: If the contractor is being reimbursed for the full value of the claim, why would they go and subrogate it later on? What's their incentive to --

MS. SPIELER: Wait, wait, wait. I'm going to exercise some prerogative as the chair here because I think there are some serious issues there that we need to get into, and we'll hold for a minute.

Let me see again if I can sum up where we are and where we appear to be moving to as the next step, which is, that I think that there's a strong feeling from the committee that there needs to be a very sort of consolidated and coordinated process for this original intake and evaluation, so that people have a single place to go, and people get as much assistance as possible in the development of the information, all the way through the review by the medical panel, and that that seems to me maybe as far as we can go on that, leaving aside - except for the question of who pays for these medical evaluations, until we get back, Paul, from you, a much more detailed sort of claims process flow chart that we can really discuss.

The next piece, it seems to me, is this question of filing with the state and notifying the contractor of the potential claim. Are we -- do we feel like we should move to that at this point?

It seems to me where we have moved to, but I want to know if that's where we -- if that's a correct summary of where we are.

Okay. Then specifically looking at this question of when -- you know, what are the relationships among the filing of the state claim, the contractor and carrier questions, the extent to which DOE is actually going to be reimbursing contractors, and the extent to which that's going to influence contractor behavior within the system, and I know Len is here from a contractor.

Are there any other contractor representatives in the room? I'd actually -- I'd like to ask you to come and join us at the table and have a conversation about some of these issues, if the rest of the committee is willing to do that. Would you be willing to do that? Thank you.

MR. BLEA: Emily? Emily, going back to what you were saying to sum everything up of where we're up to date on, are we going to leave it to Paul to find out the legality about who pays for the medical exam or shall we as a committee write a letter to the Secretary saying that we feel that they should pay for it out of this program?

Number 2. Before the contractors sit down or when they sit down, I would think as a contractor, you would be reluctant to take the liability from somebody else for future DOE contracts, but I don't know. So, it'd be interesting to hear what you have to say.

MS. SPIELER: Well, there are a number of issues that seem to be out there with regard to this whole question, and there -- and in a number of the kind of initial advice that were sent, Paul, by you to the various subcommittees, there were assumptions made about the fact that we were dealing with accepted claims, which seemed to be troubling for a number of the subcommittees because we weren't at all certain that the acceptance of claims was going to be as easy a process as that implied, and I think we need to get out very clearly on -- into our conversation what the barriers are for acceptance of claims from the contractor point of view, not as absolute barriers but as these are barriers that need to be addressed in the implementation of the program, and which I think haven't been addressed up till this point.

So, I think what I'm suggesting is a sort of dialogue here, in which we can learn more about what those barriers are. Is that acceptable to the people on the committee?

Could you identify yourself, so that --

MR. OLSON: Sure. My name is Mark Olson with INEEL, the Idaho National Engineering Environmental Laboratory.

MR. MARTINEZ: And I'm Len Martinez. I'm with Kaiser-Hill at Rocky Flats.

MS. SPIELER: And just so that the committee members could know, if you could just tell us whether you work -- the contractors you're working with are insured or self-insured in the system, in the state systems?

MR. MARTINEZ: Well, I'll speak to Kaiser-Hill, and you can speak to INEEL. We have, as I've said earlier, we have a commercial-based insurance program that has limits, and after the limits are exceeded, then the insurance carrier picks up the cost, which brings to the point of you may design a

program, and we all may agree to pay a claim, and the insurance carrier will not agree to pay the claim.

With respect to reimbursability of costs, there is reimbursability provisions in our contract. Kaiser-Hill has a unique contract, which is a target cost contract, based on a specific set of criteria, and if that criteria changes, then the target cost has to change. Otherwise, it is considered a reimbursable cost.

So, those are two constraints or not constraints but issues. I wouldn't call them barriers. I'd call them issues that would have to be addressed in whatever program was designed.

We also deal with the predecessor contractor's issues associated with any worker comp claims or berylliosis or any cancers caused by radiological issues, and those are handled on the criteria of what contract was in place at the time it occurred, and most of those policies are under the government rating plan, which is basically retrospective.

So, you have an insurance carrier that does the administration, but if the contractor says pay the claim, then the claim's paid, and the cost is reimbursed.

The issue that we deal with at Kaiser-Hill has to do with when did the -- what was the event that caused the illness, and when did that event occur, which translates into what program covers it?

We've been fortunate for the last six years that we haven't had any arguments with the carriers, and I have multiple carriers that I deal with under our contract because we've recompeted our program a couple-three different times to save millions of dollars in policy costs.

But I'm expecting that's going to occur before we're finished, that I will end up with an argument with a carrier as to whether or not they were responsible for the claim, depending on what event caused it, and when you're dealing, as many of you know, and any doctors know, that when you're dealing with radiological events, it takes a long time for it to show up, generally speaking, because, at least in our world, we have not had anybody who has had a significant -- been involved in a significant incident which would cause an injury that's obvious that it was caused by that event.

So, we recognize that we're going to be dealing with this over time, and the final little wrinkle that we deal with is we will be done some time between

-- well, if you read the GAO report, it won't be till 2008. If you look at our working plan, it says 2005, and our contract says 2006.

So, at some point between 2005 and 2008, we will be finished, and we won't be there anymore, and then you deal with the issue of how do you handle the workers that are currently there when you don't have a contractor that's a predecessor or a successor contractor? That's because there isn't one.

Where do the employees go, and how do you deal with that?

MS. SPIELER: That's really helpful actually. Thank you.

MR. BODEN: Can I ask just a couple of questions of clarification? Because I wasn't sure I understood. Your current insurance contract, basically you have a very high deductible. So, you're paying up to a certain limit on all claims, and then above that, the insurance kicks in? Is that what you said, just to clarify?

MR. MARTINEZ: That's correct.

MR. BODEN: Before you reach that limit, does the insurer have to accede to payment of claims?

MR. MARTINEZ: Yes.

MR. BODEN: Okay. Yeah. It does matter. I just wanted to clarify that. And what did you say about how your contract works in terms -- you have a target workers comp cost, and --

MR. MARTINEZ: No. We have a total project target cost of which worker comp is a part of that target cost.

MR. BODEN: I see. So, workers comp is included as part of your target costs?

MR. MARTINEZ: That's correct.

MR. BODEN: Okay.

MS. SPIELER: And presumably, given this program, that might need to be renegotiated with DOE?

MR. MARTINEZ: Depending on what happens with this program, that's correct.

MS. SPIELER: Which, I assume, Paul -- Paul, I assume DOE's open to those renegotiations?

MR. MARTINEZ: Let the record show I was not the one who said that.

MS. SPIELER: Right. That's fine. I don't mind saying it at all. I - in terms of target costs contracts, with contractors, where workers comp is a component of the target cost, that if the program changes workers comp costs as a result of payment of these claims, that that would be a component of the contract that would be renegotiated in order to implement this program, yes?

MR. MARTINEZ: Let me help him.

DR. SELIGMAN: It must be late in the day.

MR. MARTINEZ: It's up to the changes clause of the contract as to whether or not it would be something that would be eligible for a request for equitable adjustment that would require a negotiated change.

DR. SELIGMAN: I've never negotiated a contract. So, it's hard for me to reply.

MS. SPIELER: Do you think that it would be openable on that basis?

MR. MARTINEZ: Yes.

MS. SPIELER: I would concur with that. Could you also tell us some about what you see barriers -- barriers or issues might be in the implementation of this program?

MR. OLSON: As far as barriers go, I don't see anywhere near as many as at the Kaiser-Hill contract.

Two points to be made at the INEEL. We have a traditional management and operating contract which is a cost-reimbursement contract, and as part of that, we have a retrospective workers comp policy, which essentially means that all costs are borne by the government under our cost-reimbursement contract.

It's not real insurance. It's -- all that the insurance carrier provides are adjustment services, and based upon the claims history of the past one or two years, they then establish a premium that is -- that fully recoups all of their costs in not only paying claims but also claims administration, and, so, we're not going to be in a position at the INEEL of having a carrier say no, it's not covered, we're not going to pay it.

If it's covered, it's paid, but the coverage determination is based upon what the Idaho Industrial Commission says is covered by under Idaho's Workers Compensation Act.

MS. SPIELER: If you have a contract with DOE that essentially instructs you to pay a certain set of claims, how would that affect your handling of them?

MR. OLSON: We could do it.

MS. SPIELER: Would you refer them to the Idaho Commission for evaluation or would you simply agree to pay the claims?

MR. OLSON: If -- I guess it depends on what's more cost effective. If -- this -- and I don't want to mention the insurance carrier's name, but these kinds of insurance contracts are cost plus percentage of cost contracts, which are not very efficient at all, and, so, if we're going to incur -- if the government is going to incur an additional percentage just for the privilege of having that particular carrier administer the claim, to me, it makes no sense to run it through the insurance process, if we can administer it directly.

We have our two other insurance policies, one for commercial general liability policy as well as an auto policy, work the same way. On a rather large automobile accident that resulted in some substantial injuries, the prior contractor simply decided to manage the litigation itself rather than run it through that particular policy because it was going to be cheaper to do it that way.

MS. SPIELER: So, you could do it either way, and it's cheaper for the government one way than the other, but --

MR. OLSON: Yeah. Whatever --

MS. SPIELER: -- it can --

MR. OLSON: Whatever makes the most sense.

MS. SPIELER: So, again that comes down to a kind of contracting relationship between you and DOE?

MR. OLSON: Yeah. What's most cost effective, and obviously the costs that we're directed to incur or if we incur additional costs as a result of complying with this program, they're going to be reimbursable under our prime contract with DOE.

MS. SPIELER: Okay.

MS. RUDOLPH: When you said that you paid the benefits that are determined in accord with the Idaho State Commission, on an individual claim, how is the level of benefits determined when there's no dispute, meaning you've accepted the claim, you're not arguing with anyone over it? How is it determined what the level of permanent disability is or what the level of the future medical award is where there's a big -- at least in our state, there's a huge amount of variability in what those amounts might be for any given kind of case.

MR. OLSON: If I understand the question correctly, how do we determine what is paid?

MS. RUDOLPH: Hm-hmm.

MR. OLSON: By what the Industrial Commission determines to be the amount of permanent partial disability, based upon the accident or the industrial illness.

MS. SPIELER: Other specific questions? Yeah. Les?

MR. BODEN: Sort of one comment. I think the specifics of the Rocky Flats case, but also the contract, I think, point out how important it is to the success of this program that the contracting process be a part of the program, you know.

For example, it seems to me, certainly going forward, and maybe in some cases in terms of adjusting the contract, that it should not be part of the costs-- that cases that are paid under this program should not be included as part of the cost target of any contractor, because if they're included, then it's completely the contractor's incentive to deny the claim. Number 1.

Number 2. In fact, it seems if we want to encourage contractors to pay, where there may be some other reasons having to do with labor relations or

their rating on other insurance contracts that they might be bidding or so on, that there might actually be an incentive written into future negotiated contracts that provides money for administering and paying the claims, so that it's actually to the -- in the contractor's interests to approve of and pay claims that have been approved by the medical panel, you know.

So that, not only as the current memorandum reads, might their defense costs not be reimbursed, if they didn't pay, but they might actually receive a kind of bonus under their contract system for -- according to the percentage of medical panel-approved claims that they actually paid.

So, it would seem to me important to bring the contracts people on board as part of this process.

MR. MARTINEZ: Not to complicate it further, but I have a question for Mark. How much of the work

-- well, first question is, how do you cover your subcontractors for worker compensation?

MR. OLSON: They provide their own.

MR. MARTINEZ: So, there's a cost that's not included as part of the retrospective program, and those subcontractors in fact could -- their employees could in fact require this kind of benefit?

MR. OLSON: That would be a change under their subcontract that would float up naturally to DOE through our prime.

MR. MARTINEZ: Right, right. So, the only reason I bring that up, it's not a fault, it's just a wrinkle that you have to consider. For instance, at the INEEL, as Mark has said, the subcontractors provide their own, and most of those are not retrospective worker comp programs.

MR. OLSON: None of them are.

MR. MARTINEZ: Okay. You wouldn't find them in a commercial standard anyway.

At Rocky Flats, we cover all subcontractors under our insurance program. So, there's only one insurance program that covers every subcontractor

there, and that has saved the government somewhere around 30 million since 1995.

So, you have to think about how you're going to deal with something like that, because that program is very efficient, especially if you're in an environment that looks like a project that has an end to it.

INEEL doesn't have an end to it. Ours has an end to it, and the carriers won't write one of those kinds of programs, if there isn't an end to it. They just -- it's not that they don't know how, it's just they've never done it before, and they're a little concerned about how do I do that. So, that's an issue that obviously -- and the only reason I bring that up is because you have different subcontracting and contracting models at the different sites, you know.

At Hanford, it's -- somebody can help me out. I never get -- it's a monopolistic state with respect to the worker comp. Okay. So, you have a different kind of wrinkle that you have to deal with. So, you've got to think about the different states.

The only other thing that I would say, and I've been -- I've talked to somebody about this today, and it's just sort of gnawing at me in the back of my head, and I don't know what to do with it, and maybe nobody here knows what to do with it.

If this program makes a decision on how they're going to deal with certain kinds of claims, and they deal with that claim in a state in that fashion, has precedent just been set for that state? That was you I was talking to.

It's bothering me. I mean, Don brought it up to me, and I just walked away and went --

MS. SPIELER: Yes. I was actually -- we had some conversation about this in the State Relations Subcommittee this morning, and it -- I'd like to echo what Les said about bringing the contracting people on board for a pretty serious conversation about the contracting issues.

But one way potentially to avoid this question of precedential value is to create a contract that requires payment based on direction from DOE, without a waiver of anything on claims unaffected by this program.

Worker advocates who work outside this program may not be happy with that as a solution, but it would certainly remove that barrier to the

acceptance of claims at the local level, and it could be done through a contract relationship and an MOU relationships with the state agencies, I think.

It would need some thinking through, but it's worth thinking about it.

MR. ELISBURG: There's another point that I just wanted to clarify here. It's something Kate said. It seems to me that the way the statute is written, that once the DOE determines that there is a valid claim or the Secretary of HHS, through the medical panel, sends back the valid claim, that the filing of that claim with the state agency, that the DOE is going to be the agency, I think, to determine who pays, that this is not going to be thrown into the state to decide which of the 35 subcontractors that, you know, were involved at that DOE site get apportioned.

It seems to me that's a DOE decision that they're going to have to make, I think, the way the statute runs, that you're not sending this into the state to make that kind of a determination because you're basically directing the contractor at DOE not to contest the claim, which means you're going to have to determine who that contractor or contractors are.

MR. MARTINEZ: It's an easy answer, and the easy answer is, and in its contract space, but the easy answer is you pass the liability, if you will, as a reimbursable cost on to the successor contractor, if there's a successor contractor.

So, don't get into the space that says how much of it do I give to Contractor X and how much do I give to Contractor Y? Forget that. All that does is create administrative burden. The Department of Energy will never be able to close out a contract, not as long as there's one living employee who was employed at the time that contractor was there. So, don't do that.

You can do it in contract space. You just modify the contract with the successor contractor that they are responsible for that cost, make it reimbursable under the terms and conditions of the contract, and move on.

MS. SPIELER: That would cover presumably both subs and predecessor contractors, and it seems like that obvious way to deal with this particular problem.

It doesn't deal with the situation that you've raised, which is a separate scenario. What happens in 2010 to the Rocky Flat worker or to this -- the

workers who may be on this list from the Federal Register of employers who may no longer be in business.

MR. MARTINEZ: It does not address subcontracts that are lump sum.

MS. SPIELER: Is there any way to do that in a primary --

MR. MARTINEZ: I'd have to think about it, but there's a solution.

MS. SPIELER: I think --

MR. MARTINEZ: You can come up with a contracting solution to it.

MS. SPIELER: Yeah. I think so, also.

MS. RUDOLPH: I'm just wondering if folks at DOE have any estimates of what proportion of the workers that are eligible or potentially eligible fall under these different kinds of contractual arrangements in terms of, you know, have you researched what the insurance agreements were, how many of them were with contractors that were insured versus not, how many of the subcontractors -- so, are we going in a pathway that's relevant to only the tiniest proportion of claims or --

MR. BODEN: Quickly, if you take Len's solution, you don't need any of that. I mean, that's the beauty of his solution, is it gets you out of the -- I mean, there -- I'm sure there are problems with it, too, but it gets you out of worrying about insured claims. It gets you out of worrying about past claims, because all the liability resides with the current general contractor, and through them to the DOE, because it's a reimbursable cost.

So, if that's feasible from DOE's point of view, and I'm not claiming to know whether it is or it isn't, it cuts through everything, and, so, it's beautiful in that way. It just eliminates all the problems.

MR. MARKOWITZ: Well, then why not take it a step further and cut out the contractor? If DOE determines what's a valid claim, do we ask the contractor to pay? The contractor pays. DOE reimburses the contractor. Then why doesn't DOE just pay for it directly? Why involve a contractor at all?

MR. BODEN: Because the contractor is the -- there's an employment relationship there that needs to be --

MR. ELISBURG: Presumably in order to deal with the state agency and the on-going workers comp system, you have to have an employer, and the employer -- these folks have never been employees of the Department of Energy. They have been employers -- employees of a private employer of some kind.

MS. SPIELER: Actually, though, don't you -- I think that the problem is more the sort of local determination on the partial disability, on the medical care, and so on, that you could, for example, through MOUs with the states, set up DOE as the quasi-employer in a claim, but it still would -- it's not entirely clear that that would be a better solution in terms of dealing with the post-compensability issues in a claim.

Now, I'm not suggesting one or the other is better, but I just think it -- there are some issues out there that we would need to discuss.

MR. MARTINEZ: Be careful, you put the Department of Energy between the employer and the employee. You don't want to do that from a management standpoint. I can tell you we spent four of our first five years changing the culture of our workforce to the fact that we weren't going away, therefore they worked for the Department of Energy, which creates some other management issues associated with getting work done, what the culture is, what your expectation is, how you reward employees and all kinds of things like that.

So, I mean, that's a management issue, but if you start saying, well, from a worker comp standpoint, we'll make DOE the employer of record, I'll put that in quotes, then you suddenly set up a different relationship between the contractor that's trying to do the work on the site and the employee, and I don't think you want to go there.

MS. KIMPAN: Emily? Len? There's one state in which DOE has that standing. It's Washington State. It's part of the state statute, and in reference to if DOE were able to and willing to, the state administrators, you know, and Iris is one, can answer, but the state administrators with whom I've spoken in detail about this have been very clear that the employment relationship is again a defense that somebody can raise to say you're not my employee, I'm not paying.

If there is a willing payor, somebody here with a big checkbook, if there is a willing payor, the states will allow anybody as a willing payor. The employment relationship is a potential defense for somebody saying I'm not responsible. You have no employment relationship with me. So.

MS. POST: I'm not sure I totally agree with you, Kate, because I think some may deem it to be a subject matter jurisdictional issue, exclusive -- you know, the exclusivity of the Workers Compensation Act, etc.

So, I think, you know, some states may consider that a subject matter jurisdictional issue way beyond what a memorandum of understanding could --

MS. SPIELER: Which is different from the other issues that we've been talking about that are clearly waivable as defenses.

MS. KIMPAN: Let me be clear, and I didn't get in there because there are a bunch of details, but many states have a fund through which that could occur, whether it's a special comp fund or a fund within the state agency.

We can't walk into that. It would take some work with the state agency. My point only being it's shy of creating a relationship or we're the direct employer, which was suggested.

MS. POST: And I think that raises a good question -- good issue in conjunction with what Len was saying. There's lots of reasons not to waive that employer status either as a contractor. You may want to keep that protection of the exclusive remedy in the Workers Compensation Act and not waive that to the extent that the Department of Energy is now stepping into your shoes.

MS. SPIELER: Although for a lot of these people, there isn't a current employment relationship with the contractor presumably, and for those people, this isn't an issue.

MS. RUDOLPH: Yes. I'm just thinking that -- I mean, if -- even if one accepts this, you know, elegant solution of putting the current contractor on the hook essentially for whatever -- whoever the previous contractors were or for all of the subcontractors, past or present, it does pose some additional problems in terms of a notice to the workers and notice to all of the prior contractors and their insurers and all of the subcontractors because at that initial moment that the claim is filed, unless all of those people are aware of who's going to pay, you know, and the subcontractor isn't really on the hook, the claim's going to be denied, and then you're going to have a mess.

MR. ELISBURG: Emily, it seems to me we don't need to go here, and the reason is that we're dealing with the statute that Congress passed, and the way they passed it was to have the DOE basically direct contractors to pay the claims at the state level.

There are at least five or six iterations of a comp system where it could have been a direct pay from the Federal Government, and it was chosen not to go that route.

So, it seems to me we don't have to argue about who's the employer here, how it's going to work. The statute lays it out.

MS. SPIELER: Let me then ask. Assuming that's true, what happens to the people where there is not a current employer? A current contractor? Is there a plan for dealing with those people? Will DOE simply stand in and deal with the payment of those claims?

MR. BODEN: So, it's not a successor -- so, it's Rocky Flats after 2010 or whatever?

DR. SELIGMAN: Somebody's going to have to pay.

MS. SPIELER: Yes, and presumably Rocky Flats is there, and it's been completely -- what's the word? Decommissioned, and no one is there now, and a worker who worked at Rocky Flats comes forward in the year 2010. Somebody's going to have to pay. You work up their claim. The medical panel says this is an eligible worker. Maybe they had a disease with a latency period, and, so, they didn't come forward in 2001 or 2002.

Does DOE pay that claim directly?

DR. SELIGMAN: Great question.

DR. MICHAELS: Is this the period of public comment?

MS. SPIELER: Actually I was going to say, I think the -- and thank you, Steve. The agenda called for a period of public comment from 5:30 to 6:30, and given the FACA regulations, I think we need to open this up for public comment at this time.

If there are people who would like -- who are not at the table and who would like to comment or if the two of you who are not members of the committee would like to make any further comment, now is the time that we would accept those comments, and at the close of that comment period, if the committee would like to continue, I believe that the Federal Register notice allowed us to continue to meet until 6:30, and I believe that we can do that. Is that right, Judy? Okay.

So, are there members of -- given that the notice said 5:30, I'd like to open this up for public comment at this time.

Public Comment Period

DR. MICHAELS: My name is David Michaels, and I just want to comment as an observer that this has been a very, very productive committee, and you've done a tremendous amount of work since the last time you've met, and as a taxpayer and member of the public, I'm very grateful for the work that you've done.

Also, let me compliment the agencies, in particular Paul Seligman and the work that he's done in moving the Department of Energy forward in the last few months, and the Advocacy Office has made great strides.

I'd also like to make a criticism, though, of the person who put this committee together and didn't initially include the contractors. I think it was remiss, and I'm glad that's been -- that problem has been addressed because I think the contribution that the contractor representatives have made on this has really been very important.

I really do just want to say I'm very grateful. I think there are tremendous complexities in what you're trying to do. Some of them reflect just the reality of the world out there. It's very complex. Others reflect the fact this was a political compromise, and this bill was passed in various pieces, and there clearly wasn't and couldn't have been an overall sort of theory that went behind all this because that bill never passed. The bill that was passed was a compromise.

There was a little -- you know, it was neither fish nor fowl, and given that, I think you're doing a tremendous job trying to wrestle with this, and I think you've been of great help to the Advocacy Office certainly, and I think to the other agencies, and I just wanted to express my thanks.

MS. SPIELER: Thank you. Other public comments?

DR. SELIGMAN: Not public, but --

MS. SPIELER: Let's just wait, give people one minute to --

(No response)

MS. SPIELER: Okay. Paul, go ahead.

DR. SELIGMAN: Just so you know, I'm -- my intention here is not to be coy about the question of who pays, because it's a complicated one.

There is at the present time, given at this point in time, very little consideration, for example, as to who pays for the atomic weapons employees, and, you know, who would be responsible for those claims that we will be assisting with through state compensation systems, particularly since some of these employers are no longer in existence, and fortunately there is a fund clearly for the beryllium vendors because that falls under the jurisdiction of the Department of Labor.

So, in that respect, there is no question in that regard as to who pays for those. But it is an important question, which has yet to be worked out, regarding the past DOE employers and subcontractors who no longer exist, and to what degree those costs can be covered contractually in the current landlords, also recognizing that there are many sites out there which no longer exist.

For instance, Pinellas in Florida, and again some mechanism and some determination needs to be made as to who's going to pay for those.

So, again, it was not to be -- it was to be purposefully evasive, if you will, and we don't know the answers to many of those questions, as to who's going to be responsible for paying for many of these things, and they have a potential huge burden, which I don't believe was contemplated initially in this legislation, particularly for the non-DOE contractor workers who worked in the atomic weapons sector for those 317 some odd employers.

MR. ELLENBERGER: I'm glad you raised that, Paul, because it's a question I was going to ask of you just before Emily opened it up for public comment.

The portion of the Act that is administered, to be administered by the Department of Labor is an entitlement program, and it's coming out of the fund, which is the Treasury, and we don't have to have these arguments about who pays, but the claims that are going to go through this state system with the assistance of the Office of Worker Advocacy are going to have to be paid presumably out of DOE's budget, and --

DR. SELIGMAN: That's correct.

MR. ELLENBERGER: -- that's sort of the unstated. It doesn't matter, you know, what we do with the incentives. If we remove all the disincentives or all the negative incentives for employers and insurers to contest

claims, and, you know, we say we're going to do the right thing and handle these right, we're going to end up in the same situation that the DOJ has with RECA claims, that you had meritorious claims, but you don't have money to pay for them, and you've got people out there who've been promised an empty bag.

MR. ELISBURG: Actually, as we think about it, the issue is not who pays because whether it's a subcontractor at Pinellas that was closed down five or 10 years ago or someone operating today, the Department of Energy, one of its divisions is going to pay.

The question will be the mechanism by which that claim can be moved through a particular state agency in the absence of an employer or whether or not the Department of Energy in some fashion will be treated as the surrogate employer for purposes of processing a claim. I think where the money comes from is clear.

MS. RUDOLPH: It just also implies that in the MOUs with the states, that that has to be addressed, because if the states have mechanisms for paying claims, where there's no employer, then the state needs to get reimbursed directly from DOE.

MS. SPIELER: The process for that needs to be worked out, whether it's going to be charged against those funds and reimbursed or paid directly by DOE, and how the DOE is going to handle those claims, if they're standing in the -- with the employer hat and making the decisions about medical care and permanent partial and so on.

MS. POST: But even if the contractor no longer exists, what about the insurance carrier who still has that coverage?

MS. SPIELER: The suggestion that Len was making, I think, took us entirely out of the carrier liability, and I think this is an issue that probably needs to be really explored by the Subcommittee on Contractor/Insurer Relations.

I mean, I have a couple of sort of initial reactions about sending it over to the carrier who may or may not have thought that this was part of the premium they charged 10 years ago when they were covering that employer, and whether that's really where we would want to go with that, but I think we need to have a kind of careful conversation about that process.

DR. SELIGMAN: The other thing, Emily, that would probably be very valuable is that the organizations within the department that pay for these are

basically, for lack of a better term, our landlord offices. It's the Office of Environmental Management. It's the Office of Defense Programs or NNSA. It's the Office of Science, who basically are those entities within the Department of Energy that engage in the contracts that result in the operations of our facilities and our laboratories, and it's ultimately actually their -- we talk about sort of the DOE paying, but ultimately it is in the context of their budgets that funds will ultimately need to be identified to pay for those claims.

MR. MARTINEZ: Not to make it more complex, but you could have sites that at one point in time were funded from one fund source and no longer funded from that fund source, and the time frame in which the latency -- the latency period in which the person is now known to be injured was back when there was funding from a different fund source. Now who pays?

MS. SPIELER: Presumably some of these issues are internal DOE issues and clearly need to be figured out as a component of the claims process.

DR. SELIGMAN: Absolutely.

MS. SPIELER: It might be helpful, Paul, if you could assign someone from the Contracting Office to work with the Insurer/Contractor Subcommittee, so that when we convene perhaps soon by telephone call when John Burton returns from his trip to Australia, we could have someone on -- in -- sort of in communication with the committee who can answer contracting questions.

DR. SELIGMAN: I'd be delighted to.

MR. BODEN: Paul? In -- occasionally in my dealings with various people in the Department of Energy, I get the feeling that it's not always the case that the various groups within the DOE are reading from the same page or are doing -- have the same goals in mind, and I'm sort of wondering to what extent this program is widely supported in the parts of the department that would be paying for it, to be blunt.

You don't have to turn on your microphone or answer the question, if you want to, but, I mean, it is -- I get -- you know, it's one thing when, you know, you've got the, you know, Secretary of Energy, this is his major big deal and sort of he's, you know, pushing everything, and it's something else when you have somebody who's his successor who may not -- this may not be the most important thing on that person's agenda, and where you've got one group that's working out the overall scheme, but other groups within the department actually out of whose pockets the money is coming.

DR. SELIGMAN: All I can say is that irrespective of administration, the mission of the various landlord offices is, you know, to do big science, to do environmental management and remediation, to manage the weapons stockpile, and they have and will always look at funds that are redirected from their primary mission with some, you know, trepidation.

MR. BODEN: Right.

DR. SELIGMAN: I know, Don, you're shaking your head, but I think that's the reality, and I don't believe that has changed in the last six months or 10 years.

MR. ELISBURG: I was going to say, Paul, you know, for the committee, it seems to me that this -- where you go with that really is probably as much an issue for the Congress as it is for the Department of Energy because the Congress made the commitment, and the Congress committed these agencies to pay, and however the new Administration and the new Congress sorts it out, that's really where the issue is.

You know, there was a fairly strong determination in Congress to pass some kind of a program, and they were the ones that Christmas treed it.

MR. BODEN: So, what I think I hear you saying, Don, is that if we're to avoid some of the potential conflicts that I sort of see here in the year where the budget has already been fixed, that if there are appropriations that would pay for this extra compensation, then that would make this less of a concern than if there aren't such appropriations, and the monies are coming from some other objective that the other entities within DOE might have, is that --

MR. ELISBURG: I assume you're addressing that to the public members here? Public --

DR. SELIGMAN: Administration of this aspect of the program would certainly have been made a lot simpler had we been -- had we had access to the entitlement fund that was established for the Department of Labor. There's no doubt about that.

MR. BODEN: Yes.

DR. SELIGMAN: Other than that, as you know, it's subject to appropriation, and as Don points out, there is -- there was both a congressional and administrative commitment to this program, but there are, as you know, many

commitments out there for a whole variety of funds, and the line-managing offices have to balance those commitments as best they can.

MS. SPIELER: Since we are specifically charged with this program and not with the rest of the mission of DOE, it would be nice or actually I should probably frame this in a stronger way, we would like, I think, reports from you on the issue of appropriations and availability of funds because we do view this as an entitlement program, and if it's an unfunded entitlement program, we need to know that.

Let me again see if I can -- it's 6:00 now, and I think that people are growing a bit weary. I also think that we've made actually -- I think this has been a really good afternoon meeting, and I think we've made a lot of progress on some really important issues.

I understand that we're under a sort of requirement that we start our public meeting at 9:00 tomorrow morning. The -- at least one subcommittee, I think, has set a meeting to start at 8, is that right?

Do other subcommittees want to continue meeting tomorrow morning?

(No response)

MS. SPIELER: Okay. Let me throw out a thought here just in terms of where we are. I think that we will need some time toward the end of the morning tomorrow to sum up where we are and discuss any specific concerns we have, for example, around this issue of medical evaluations or any others that arise.

The area -- the sort of large area that I think we haven't discussed as a committee is the issue of the medical panels, the causation issues, this sort of whole component of how that piece is going to work.

If the subcommittee feels that they would like some additional time to discuss it before the full committee convenes, that would certainly be one possibility.

An alternative possibility is to open this up as a full committee discussion at 9:00 to discuss the medical panel issues, and I look to the committee for guidance on this.

MS. WELCH: Well, a personal request would be if we could have a subcommittee meeting from 9 to 9:30 or something like that, because I actually have a meeting before this that I have to go to in the morning, but I could get here by 9, but if -- because I think it would be useful to have more subcommittee discussion, based on everything we talked about today, before we -- but if the rest of the committee --

DR. WAGNER: Perhaps it would be possible to convene the public meeting at 9, as in the Federal Register, and then move to subcommittee meetings immediately thereafter.

MS. SPIELER: The subcommittee meetings would then have to be public. I mean, I don't have a problem with that, but that's my understanding of how the rules work.

So, -- or we could -- the other subcommittees are free to meet at 8, and as long as whatever meetings are convened starting at 9:00 are open to the public or -- and in this room, I don't think we would be in violation of the Federal Register notice, is that right, Judy? Okay. Yes, Judy confirms that that's correct.

MR. ELISBURG: Emily, can I assume that one way or another, we're out of here by noon?

MS. SPIELER: I believe that we're bound to be out of here by noon, yes. So, what's the will of the -- would you like to convene -- one subcommittee meeting is starting at 8.

Would you like to convene a second subcommittee meeting at 9 to meet for half an hour, and the full committee will convene at 9:30 tomorrow morning? Is that the suggestion, with the understanding that both will meet in this room, and that starting at 9:00, those subcommittee meetings will be open, and that we will open at 9:30 and take up the questions that are before the Medical Panel Subcommittee? Is that --

MR. ELISBURG: Can you also make sure that you reserve some time to deal with the Program Evaluation and Performance Measures as well?

MS. SPIELER: Yes. I was assuming we would spend perhaps the first hour on the Medical Panels, then move to the Program Evaluation, and then move to a sum-up. There are some issues that are out there in terms of committee functioning, where we want to meet, whether we want to have some public

meetings at any of the sites, and so on, that I would like to take up at the end of the morning, as part of the scheduling process. Is that okay with you, Vikki? Okay.

Les?

MR. BODEN: I think you know my concern. I would like to be able to be flexible, to leave a little early, because it's supposed to be snowing in Boston. I absolutely need to be in Boston tomorrow afternoon.

MS. SPIELER: You know, if the committee would prefer to take up Evaluation first at 9:30 and then move to the Medical Panel issue, that's certainly okay with me, and my guess is it's a conversation that will take less time than the Medical Panel one.

MR. BODEN: Absolutely.

MS. SPIELER: Okay.

MR. MARKOWITZ: I have to step out at 11 for half an hour, but the rest of the committee can do it. I mean, we can start, and then they can take over. It's not a problem.

MS. SPIELER: That actually may not be a problem. I mean, if we discuss, say, the Program Evaluation from 9:30 to 10, start the Medical Panel discussion at 10, and hope that by -- sort of -- let's see. We have, I think, a public comment period again tomorrow. I can't remember. At 11:45.

So, we -- and we'll need some time to do some scheduling and discussing of how the committee's going to function in the next period. 11:15. Right. Well, why don't we just assume at 11:00, we'll move to some of the committee business? Is that -- does that sound reasonable? 9:30 to 10, we'll do the Performance Evaluation, 10 to 11 Medical Panel, move to committee business at 11. Steve, make sure you don't walk out of here without leaving your schedule with someone.

Okay. Then I don't know if I need a formal motion to adjourn.

MR. BODEN: So moved.

(Second)

MS. SPIELER: Okay. Adjourned until 9:00 tomorrow morning with the full committee convening at 9:30.

(Whereupon, at 6:05 p.m., the meeting was adjourned, to reconvene tomorrow morning, Friday, March 9th, 2001, at 9:00 a.m.)

PROCEEDINGS

March 9, 2001

9:43 A.M.

MS. SPIELER: Good morning. This is the continuation of the full Worker Advocacy Advisory Committee meeting that was begun yesterday. I have asked the subcommittees to at least suspend their discussions at this point, so that the Full Committee can meet.

Here is what I would propose we do this morning. We discussed this yesterday, but I have just a couple of slight. I want to do a quick sum up of where I think we were at the end of the day yesterday. And I believe that Dr. Seligman has some questions that he would like to, the Committee could consider either today or on going sub committee discussions. And I have asked him to just present those to the Committee.

Then we are going to move to a quick report from the Worker Notification and Filing Group that had another meeting this meeting, if there is anything that you would like to put on the Committee's agenda for thought. And then a hopefully, fairly structured discussion of the program evaluation component. You will be out of here by 10:30, because my hope continues to be that you will then spend the bulk of this morning discussing the medical panel issues.

The agenda calls for public comments at 11:15, so we will break at 11:15 to ask if there are public comments to be offered. And then discuss the what the staff has labeled the Path Forward, which is our future plans. We will be adjourning at noon.

So, first, just to sort of ground us on where I think we are and some of the issues that we identified yesterday. We spent most of yesterday as a full committee discussing what I would consider to be process issues with regard to the handling of claims after the presentations from Dr. Seligman and the various agencies. Central point of agreement was that there needed to be a central point of process, taking information and processing the claims and from the point of view of claimants or beneficiaries that this had to be a simple and transparent process. Obviously, as well, although it went unstated much of the time, it has to be a process that is prepared to deal with a very large number of claims at the

initial point. That there will be a large number of claims that come in, I would say in the first six months of this program.

There needs to be, there need to be mechanisms to encourage acceptance of claims by successor primary contractors and a component of this, which, a component of this, which we did not discuss, a mechanism for notification to sub contractors, predecessor contractors, funds that pick up payment in states for non existent employers and so on, and to carriers of who will hold this liability so that you don't get denials of claims from people who actually aren't responsible for them.

There has to be a contractual mechanism in place for dealing with both the claims against current contractors and also a mechanism in place for dealing with claims in which there is no current primary contractor.

There was a strong feeling from this committee that we need from the Department a flow chart, an implementation plan. That we can see on paper what the plan is for the processing of claims and understand exactly what is planned so that we can provide reasonable input.

And some discussion about the question of the Memorandum of Understanding with the states, including the fact that such memorandum clearly need to deal with some of these initial claims filing issues, what if a claim comes initially to the state, what are you going to do about this, the fact that some claims may be filed that are, that this program covers against people who we don't, entities that we don't think are the responsible party for the payment of claims and so on.

We kind of did not get to and I think this morning maybe, the component of the discussion of the medical panel question as to what is a claim? What goes to the medical panel? What is adequate preparation for sending it to medical panel or medical panel staff and when, what should the medical panel do with it. And that I think will be the primary focus of our discussion this morning.

Paul, you indicated that there was some questions particularly based on, somewhat on yesterday's conversations that you would like to us to be able to give you feedback on at some point in the reasonably near future. Could you just lay those out for us? I am suggesting that we not discuss these questions now but I think that the Committee needs to be alerted to the, what these questions are.

DR. SELIGMAN: Well, one of them was discussed yesterday and that is the, you know, the questions agreed that we should be providing medical

diagnostic care and at what point, in that, in the process we should be doing so. Clearly, the, you know, our Sub Title D, which is assistant in state workers compensation proceeding in the law, you know, refers to establishing procedures under which an individual may submit an application for review and assistance. And under this section it tends in large measure to, you know, to focus on the application and review process. And at least in this section of the law, it doesn't mention the kinds of things that the Donald Elisburg referred to yesterday, that appear elsewhere in the law regarding, you know, medical, as I said, you know, diagnostic evaluations and any subsequent testing or work that needs to be done in the context of the physicians panels reviews.

The second question that I wanted to raise, which came up in a variety of contexts yesterday but I want to lay before the Committee, again, has to do with our charge under the law. It does ask us to essentially provide assistance to the Department of Energy contractor employees in filing claims under the appropriate state workers compensation system, but is silent about other groups of workers that are mentioned elsewhere in the legislation and in particular the employees of Beryllium Vendors and employees of the Atomic Weapons employers. And we have in our hotline, gotten a considerable number of calls from individuals asking us about the law, asking us about information there. Certainly part of our mailing list and we certainly treat them at present the way we treat everybody else, but they do, when comes ultimately to claims assistance and claims filing and all of the work necessary in the assembling of claims, including verifying employment and medical information, they do place a burden on the Department, which is very different than that of from our contractor employees, for whom we have control over the records, as a result of our fact that these, for DOE contractor employees, they worked at a Government owned facility as opposed to many of the 300 some odd companies on the list, who never had, beyond the fact that they did, you know, specific work at a specific time in supplying materials or supplying services, the Department never really go owned. So, they do present a challenge and we would certainly look to the Committee to give us some guidance as to, you know, to what degree we should be assisting this, these two classes of workers, the Beryllium Vendors and the Atomic Weapons employees.

MS. SPIELER: Thank you.

Vicki, the Worker Notification Group and Claims Filing Group met again this morning. We discussed your committee's issues yesterday, but if there is something that the Committee feels should be added, I think now is the time.

MS. HATFIELD: We did discuss the question that was just presented to the Committee and we feel like that all employees deserve the same consideration and whether they were on site employees or whether they worked for a Beryllium vendor or whoever it is. We feel like that we owe them the same responsibility. So, we are suggesting that maybe the Committee as a whole might write a letter to the Secretary of Energy suggesting that they make amendments to include these workers in all of our work as we move forward as a Committee so that we don't exclude anyone.

MS. SPIELER: Just a point of clarification. Are they not included in this Committee's work as of now or can we assume they are included?

DR. SELIGMAN: Well, again, according to the legislation, the legislation directs this office, in establishing this office to provide assistance to Department of Energy contractor employees. And as I said, it is silent on to what degree we should be providing assistance to these other groups that are mentioned elsewhere in the legislation.

MS. KIDD-TAYLOR: The question that I have then goes back to a follow up to yesterday on that facilities list. All the listing there. They are not included in our work then. You know, the listing of the facilities was announced in January with the names of the AWE, AWED/DOE facilities, you know, I am just trying to get a clear agreement or something in my mind of what that means from that listing. Employees at these facilities on this list.

MR. WAGNER: Its listed as a list of covered facilities.

DR. SELIGMAN: That is correct.

MS. KIDD-TAYLOR: So, but, are you saying that these are not all included in --

DR. SELIGMAN: That particular list includes, if you look at the list, there are, there is a DOE designation.

MS. KIDD-TAYLOR: That is right.

DR. SELIGMAN: BEV designation and an AWE designation.

MS. KIDD-TAYLOR: Right, yes.

DR. SELIGMAN: The DOE designation are basically those individuals who are named in the legislation as those that are, we are required to

provide assistance to in the filing of claims as it states. The law is silent about the BEV and AWE.

MS. KIDD-TAYLOR: AWE.

DR. SELIGMAN: Employers. They seem like a technicality, but in terms of program implementation it is not. It is just a question of, you know, to what degree we offer assistance to those groups as well.

MS. KIDD-TAYLOR: See, because there is a lot. I mean, there is a lot of facilities that don't have.

MS. SPIELER: Laurie?

MS. WELCH: I don't, it is sort of clarification. I think this would require some discussion of the whole Committee and if now is the time, I can, but if we want to, you know, the idea of the Committee sending a letter saying that these people should be covered. So, do we want to discuss that now?

MS. SPIELER: I actually want a clarification from Vikki. Did you say that a letter saying these people should be treated the same or that it should be within the scope of this Committee's jurisdiction to discuss this issue?

MS. HATFIELD: Well, probably both. If we discuss it and we decide that is what we would like to do, that is fine. But, I think we have to discuss it because I don't think at this point that we can exclude, even though they did not work on site.

MS. SPIELER: Let me just interrupt your for a minute. My understanding of the charter of this Committee, which I am looking at now, it says advice on worker compensation policy issues of concern to the Department of Energy. So, it seems to me that the charter to this Committee clearly allows us to take up this issue. And that we don't have to approach the Secretary for expansion of our jurisdiction in order to take up this issue.

DR. SELIGMAN: I agree with you. That is correct.

MS. SPIELER: However, that does not answer the substantive question as to what our advice would be with regard to this issue.

DR. SELIGMAN: That is also correct.

MS. SPIELER: However, but one more however, which is that I think that perhaps it is premature to discuss a letter to the Secretary on this issue. And just as a matter of procedural issues, we have a number of questions before this Committee that are very specific in substantive with regard to the program. An example from yesterday would be the question of who pays for medical evaluation examinations? I think this Committee will need to take up those specific questions and reach some kind of determination of them as we work our way through these questions.

Now, we have a sort of procedural glitch here in terms of the Committee's meeting schedule right now because the discussion of program evaluation needs to be completed by 10:30 so Les Boden can leave. And I would suggest that we take this question up as to the scope of the DOE's responsibility to these workers as a separate agenda item, if possible, and I would like to do this after we discuss the medical panel. If we don't have time to do that this morning, I think we have to, in our discussion of how we are going to move forward, there are several issues that have come up that we need to decide as to which current subcommittee will take them up or whether and I am reluctant to say this, we need additional subcommittees to take them up. But, and then get those very concrete questions that haven't been resolved yet today on the agenda for the next for the next meeting. That would be my suggestion in terms of how to proceed.

DR. SELIGMAN: Yeah, I think it is, I agreed.

MS. SPIELER: Is there any objection to proceeding that way from the Committee? Okay. So, we have that issue clearly before us as a question then. And we are agreed that it is within our jurisdiction to address it. And I am going to ask that we move on to program evaluation at this point and we will come back to this.

MR. BLEA: Emily? Just real quick, before Les leaves, whether we do it now or later, I think the Committee should decide when we are going to meet again, while the whole Committee is here.

MR. BODEN: Can I suggest that we, that we, make some tentative decisions but that not everybody has their schedules in place, maybe, and some people aren't here, like John Burton. You might want to do that final thing by e-mail or phone or something.

MS. SPIELER: Yeah. Okay. There are several issues with regard to when and where we meet next. And I would, why don't we have a discussion of the program evaluation piece and then reach some consensus as a Committee as to sort of how soon we want to meet and possibly where we want to meet and then

sort of, we will do the, we will ask Judy and staff to finalize the plans for that. Is that acceptable? Okay. Les, go ahead.

MR. BODEN: Okay. I think in the interest of time, I will tell you what I want to try to do and what I don't want to try to do in the next 20 minutes or so.

I want to let you know sort of, I think in general what our thinking is about overall about the performance measures and the categories that we are thinking about doing them in, but maybe not get into a lot of detail about the specific performance measures. And then I would propose that I sort of e-mail something to everybody on the Committee for feedback on specifics as a way of proceeding, if that is okay with people.

Part of the reason for this is that basically performance measures involve every component, all the components of this thing. So, getting into detail about all of them might take us longer then the next half hour to do.

Let me just start by giving what I think is the Committee's perspective on the performance measures. I think of them as having two functions. The obvious one is sort of in the name right there, they are suppose to measure their performance of the program. But, that requires a specification of what the program goals are against which to measure the performance. And so, I think in the process of trying to do that, we are going to have to work with the Committee and with DOE to clarify goals and I will give one or two examples as I go along.

The second thing is that once you establish performance measures, the measures, themselves, may affect the behavior of the people who are involved, whose performance is being measured. And so, we want to try to think about how that might work and whether the measures that we are talking about would end up affecting behavior in the direction that we would like to affect it and behavior includes the reporting of information that the performance measures are based on.

So, that is a quick overview of how we think about these. And then what, what I have done for this morning is to try to organize the measurements by sort of general areas and goals. And let me just list them first.

I mean, one of them is outreach by DOE or by people who DOE contracts with. And we have talked about that.

A second is the functioning of the state workers compensation systems for, in terms of informing people how to use the system, getting

potentially eligible claims into the systems and providing an easy to use process for the workers who get into the system.

The third is the performance of the medical panels in providing timely and here is one problem in how to measure things, accurate assessments of eligibility. And I will go, give you some details on these after I go over the list.

The fourth is measuring the performance if contractors and perhaps insurers depending on how this is eventually structured, in providing timely and efficient payment of benefits for those people who have been declared eligible by the medical panels. And, and then I would say also for the DOE program, providing timely feedback and information to people who were in the system, allowing them to sort of know what is going on.

I think those are the main sort of subcategories. In some ways all these things go into the overall measurement of how well the system is working by, in terms of providing timely and efficient payment of these claims and making the experience of the claimants in the system, I wouldn't say necessarily a good one, as that may be too high a goal to achieve, but at least a tolerably decent experience.

And I think we have talked about two methods of gathering information or two types of performance measures. One of which is quantitative and the other of which is qualitative. The one of which is information that can be gathered as numbers measuring the performance of the system like how long does it take the medical panel from the time that it receives a claim to the time that it provides an assessment of the eligibility of the claimant for receiving benefits.

And then there are also things, then we also think that it would be important to have interviews of both people who file claims, and people who are potential filers to find out how they have perceived their interaction with the various components of the system. And, in addition, I think, that it would be important to have interviews of other participants in the system like the contractors and so on, to see how things are working for them.

So, that is sort of the overall picture.

Let me try to give you some specifics, but I don't want to sort of go through all of them, but maybe to give you examples of the kinds of things that we are thinking about.

Let me take medical panels. Timeliness, I think, is a fairly easy kind of thing to measure, receipt to, to the time that the evaluation is done and

then there is another step which is getting the evaluation, which may not be the medical panel job, to the appropriate place in the system, I think as yet undetermined until we have a flow chart, so, that the next steps can be taken.

The other thing that we thought about doing in the case of the medical panels, even though we might not be able to measure accuracy, is at least to measure consistency by having a certain fraction of decisions made by one panel, also made by another panel blind, not knowing that the decision had already been made to see whether the same claim would get the same result given to different groups.

In terms of contractors and insurers, I think we thought about measuring their performance in terms of time to, in terms of starting off with claims that had received medical panel approval, and then asking questions, how long did it take to approve the payment of the claim? How long did it take for payments to get to claimants? What percentage of approved claims ended up being paid without any kind of dispute? What percentage were disputed and maybe eventually paid? And also another measure was the cost of delivering the dollar of benefits. That is how much administrative and legal and other kinds of costs were involved in delivering the benefits to workers.

And finally, and I think I am just going to give these two examples and if you want more, I can, otherwise I will e-mail things out to you. Finally, in terms of the contractor performance measures, we would want to be interviewing workers who gone through the process to see what the experience of going through that process was like for them, including how long they had to wait and what they knew and what problems they encountered from their perspective. And in addition, interview the contractors to find out if, both if the system, itself, was working okay from their perspective, but also to find out if there were, and I think this is something that we are going to have to look for in general, if there are issues or problems that develop that we hadn't contemplated, that are causing problems that might be ameliorated as the system goes forward.

So, that is sort of a brief summary of what, of what we are trying to do.

MS. SPIELER: Questions, discussion?

MS. POST: Did your subcommittee, Leslie, talk about the need for statistical information from the state agencies and if so, how would you contemplate, I guess, doing, modeling that or coming up with recommendations, because as you know every state is different?

MR. BODEN: Yeah. We did contemplate looking at how the state system was functioning and we saw sort of, in terms of data, I don't think we had developed specific data that we thought would be, you know, there are the general issues of, what is, what are, I mean, we need to identify what the role is of the state system in the process. You know, one possibility is the states will be providing information and assistance to workers. And if that is the case, we will want to find out sort of how many workers are getting into the system, what their experience is of the system, and so on in terms of getting information that allows them to apply. But, then the question after that is what specific role the state system would have. And I think it would be worth a conversation between our committee, I am on both, it is sort of funny, but our committee and the state agency committee, as things go along, to clarify what specific roles the state agencies are going to have that would be different than they had in any, in any other claim that would be processed.

MS. POST: I guess my only response is I think they would have the same role they have currently in any work related injury that comes before a state agency. I guess my question was going to have you thought about or did your subcommittee think about developing, number one, specific goals for state agencies on how long would their goal to get these claims in and out of the processing, whatever processing it may need. And then also if it did go into what we called the contested case environment, or dispute, how long that process should take. And then a measurement of that from state to state on how, say California did terrific and --

MR. BODEN: Don't count on that.

MS. POST: And New Mexico did lousy or whatever, or the reverse. That you could have some, you know, in working in the state agency, it is a lot easier for me to look at goals, okay, I want a case in and out of the system within 18 months. Now, how do I step back and so how do I put mechanisms in place to make that happen. So, you put the goals out there, which I think you are talking about doing, and then you are asking all the state agencies to measure up or further refine their processes so we can measure up.

MR. BODEN: Yes, I think that is quite good. And I think that is an area that we didn't get into as much detail as is needed. And I am looking forward to your input when I send you the e-mail. I mean, you have already made some useful points about that.

MS. SPIELER: Andrea?

MS. KIDD-TAYLOR: This is not related, but this is a procedural question. Of all the subcommittee meetings, will there be summaries written and given to the Committee members? Or has that, that would be a proposal I would like to make if that hasn't been done.

MS. SPIELER: It certainly makes sense. I don't think that we specifically asked the subcommittees to keep formal notes. If the chairs of the subcommittees could at least try to summarize the discussions perhaps, circulate it to the Committee members for whatever input they can give, if formal notes weren't taken, and then provide them to Judy so that she could send them out to everyone. Actually, I think that would be very helpful. And in the future, if we could either designate someone who will do that at each subcommittee meeting, or if there is a staff person present and it is appropriate, ask them to do that. I think that makes a lot of sense. And a good suggestion.

MS. KIDD-TAYLOR: Thank you. Because the other thing would be, so that when you meet again, you will have a starting point to know what needs to be covered.

MS. SPIELER: Let me just interrupt this for one thing because this was an oversight at the beginning of today. I wanted to welcome Dr. Mueller here and indicate for the record that she joined us this morning, so that it was clear that you are here. My apologies.

MR. ELISBURG: Emily? My subcommittee that we met via telephone, DOE participated and they provided a summary to the subcommittee members which I think is perfectly appropriate to pass onto the other Committee members.

MS. SPIELER: That would be fine. I am just, I am suggesting we leave to the committee chair to figure out what, how to get that done for this meeting and to think about it for subsequent meetings. And so, if that is what works for you, Don, that is terrific.

MR. BODEN: Yes. I just wanted to focus your attention on a couple of questions that came up as we were doing this, because they are really questions that relate to what the goals of the, of the program are. And I thought they might be worth thinking about at some point. You know, one, you know, as we are thinking about these issues, one question is how do we think about the goal of paying claims, you know, how many claims are accepted. Since there is no, there is no bright dividing line between people whose claims ought to be accepted and people whose claims aren't. And I think this is an issue that comes up for the medical panel discussion. It is also an issue that would arise in terms of

evaluating contractor handling of claims after the medical panel report has been passed on. And not only in the sense of accepting or not accepting, but in terms of the amount of benefits that are paid, which is, I think a harder issue in a way. That is the amount of cash benefits that are paid, but also any issues that come up in terms of the degree of medical care that is provided since, either through, since the way that medical care is delivered varies from state to state, but some kinds of medical care are easier to get than others. And, you know, for example, if the issue of palatine came up in some of these cases, it might be an important issue for us to try to think about.

So, those are a couple of questions that sort of came up as questions to us, but I think reflect back on the work of the other, of the other groups.

MS. SPIELER: John?

MR. ELISBURG: Les, are you saying, in terms of the last part, is this a question of like goals and objectives for the program?

MR. BODEN: That is right. In other words, in order to, you know, here we are thinking in our committee about, well, what are the performance measures to be? Well, the question that precedes that is what is the performance, what are the performance goals of the program and these are two particular sort of questions about performance goals that got raised, they might be, for example, important if the contracting mechanism was a way of trying to produce the kind of performance by contractors that DOE wants, then DOE has to first ask the question, well, what performance do we want? Do we want, you know, to take a simple and sort silly one, do we want contractors to pay out as much money as possible to anybody who comes through the door? (2) do we not want them to pay anything to anybody to more refined and helpful versions?

MR. ELISBURG: Well, my question, then, was does DOE have a set of proposed goals, objectives, performance measurements, whatever you want to call, either done or --

MS. SPIELER: Paul, excuse me, one second, Don. Paul, could you please join us because this is a question that you are going to need to answer.

MR. ELISBURG: Well, I was responding, in talking about Les' performance measurements, I was asking whether or not the Department, your agency has done or is doing any set of goals, objectives, performance expectations, something against which you could frame the metrics?

DR. SELIGMAN: Yes, they are part of our implementation plan. Yes, we have some objectives and goals as well, right.

MS. SPIELER: Paul, I think we need that implementation plan.

DR. SELIGMAN: Okay.

MS. SPIELER: It is, I thought you were going to provide it to us before this meeting and it is clearly keeps coming up, that if we can't know where the Department is in terms of its planning, it is really impossible for us to give useful feedback.

MR. BODEN: I think also that our committee, we need to have interplay between our committee and DOE in terms of the stuff that we are doing, so that we are not developing performance measures that are sort of off the mark or whatever.

DR. SELIGMAN: I would be happy to give you the goals and objectives right now.

The goals are to provide information to workers --

MS. SPIELER: Let me interrupt you because we actually are on a short time leash now.

DR. SELIGMAN: Okay. There are five of them.

MS. SPIELER: And it is not appropriate to have you reading a document to us that should be in our packet. I think that --

DR. SELIGMAN: Well --

MS. SPIELER: No, let me finish. I think that the situation is that we, we are very short for time for important issues that need to be discussed by this committee this morning. And what I think is being said is that the performance evaluation process needs to be molded to goals and objections of the program and the Committee clearly needs to review those. So, the, I think we should do that before our next meeting. And that those need to be provided to the program evaluation subcommittee so that you can take a look at them and make sure that you are reading from the same page.

MR. BODEN: Right. But, I also expect that in the process of our trying to develop the specific measures that there are going to be questions that

come up that may get us into a discussion about, that is at a greater level of detail and overall document would be.

DR. SELIGMAN: I can guarantee that.

MR. BODEN: Right. So, that would be a useful discussion.

DR. SELIGMAN: We have five programmatic goals and one objective.

MR. BODEN: Right. So, I mean, so, getting into the nitty gritty would be, would be --

DR. SELIGMAN: None of them should be any secret. They track the legislation --

MR. BODEN: Right.

DR. SELIGMAN: Quite closely.

MR. BODEN: Right. Right. So, we might, our committee might want to establish some kind of dialogue with you folks, where you look at some of the things that we are doing and we have that kind of back and forth that allows the process.

DR. SELIGMAN: Right. And just so it is clear to the members of the Committee, on March 1st as part of the Executive Order, we were asked to submit an implementation to OMB. This is something that we have not heard back from OMB on, so, my only readiness and of course sharing this, is that we, there is an administrative process to review this and I am, don't, certainly didn't feel like I could make something public at this point in time without at least their, their review and concurrence.

MS. SPIELER: Under federal FOIA and I am not an expert on it, I don't know if someone in the room is, once it has been sent to OMB, is it a matter, is it FOIAable?

DR. SELIGMAN: I don't know the answer to that.

MS. KIDD-TAYLOR: The question that I have, I worked on another advisory committee before, even though you have already shared it with OMB, because we are the advisory committee, a different advisory committee, we were able to review the document that was shared with OMB, even though we

knew that it had not been approved. So, maybe you could check to see if that is okay, if that is possible to do that for this committee.

DR. SELIGMAN: Yes, that is fine. But, again, there are no secrets here.

MR. BODEN: No, no.

DR. SELIGMAN: I essentially read you my implementation plan in my opening presentation. So, it is on the record.

MS. SPIELER: It is not a matter of secrets, but it is, I think once OMB approves the plan, it seems in the process it would be one that people would be fairly invested in and it may, it is entirely possible, I meant staff and it is entirely possible that an advisory committee like this could be quite helpful in refining a plan even before it were submitted to OMB and when it is in this sort of developmental stages, which is, I think, what a quite of few members of this Committee thought we would be assisting in. So, perhaps, Paul, you could ask a staff member to copy that plan that was submitted to OMB and get it back to us before we leave today, so that it could be a component of what we consider for our upcoming subcommittee discussions.

DR. SELIGMAN: I don't know if that is possible or not, but I will certainly check.

MS. SPIELER: Are you suggesting -- Or e-mail it to us, but quickly rather than after our next round of subcommittee discussion.

DR. SELIGMAN: Sure. Just so you know, all I did was summarize the, not only the legislation, but the issue papers that were presented to the various subcommittees. So, there is nothing in this document that you have not seen as a way of issues or questions that have already been raised to the subcommittees. So, I, but, again, I would be happy to share with you if you feel that there is another, an additional paper that you need to look at.

MS. SPIELER: Great.

MS. KIDD-TAYLOR: I think it would help, so all of us would be on the same page because we received the subcommittee issue papers, but not the entire document. So, we don't know how they interact or -- Right, the package.

MS. SPIELER: Actually I had thought that was going to be provided to us at the beginning of this meeting and I forgot to ask for it yesterday,

because when we discuss what would be in the packet, there was suppose to be copies of all of the subcommittee issue papers for each person on the Committee. So, and apparently I am sure that was pure oversight and I didn't mention it yesterday, but it really, the problem is that there is overlap among the subcommittees and people need to know what is on each other's agendas and what is going on. And I think together with Andrea's suggestion that we share our meeting notes, that information that is sent from the Department to the subcommittees probably needs to be more widely distributed.

I am feeling a time pressure gun to my head here, because Les is going to walk out in four or five minutes. So, to get back to the program evaluation issues. Are there other issues in particular that this, that other members of the Committee feel need to be raised with the subcommittee that is working on this question?

MR. BODEN: Yeah, are there areas that we have left out? Yeah, go ahead.

MS. WELCH: It is just a suggestion. You might direct the other subcommittees to develop specific performance measures during their conversations, you know, tell the medical panel why don't you give me an answer to these four different things. And then you don't have to do any more work.

MR. BODEN: What a wonderful idea.

MR. BODEN: Yeah, I think that is a good, and I think it is a good idea in lots of ways. So, that what I will send out my document and ask the people on the relative subcommittees to take the pieces of it and provide me anything they can. That would be terrific.

MS. SPIELER: I know this isn't your job, but have you thought how this would get done? Do you think that DOE would contract this out once it was well defined by staff and accepted as part of the program?

MR. BODEN: Actually Paul raised that question and I didn't, and we did discuss it and I think it was the sense of committee that some process like that made sense. That even if it was appropriate for DOE to do it in-house, that his office doesn't really have the, the horses to do that and all the other things it is doing.

Paul, did you want to comment?

DR. SELIGMAN: There are two things here. One is clearly we are going to need some performance measures to track how we are doing and to be able to internally evaluate our program. At the same time, I think there is some value to having an external independent evaluation of the program as well, that would be done either on contract or through some external mechanism. But, so, I think there are two things that would need to be done.

MR. SHOR: Well, one of the other things that we had discussed in the meeting was the, that the Advisory Committee and probably the Full Committee should be involved in the RFP process, if that was to be contracted out so that we would have our participation in what was to be evaluated.

MS. SPIELER: Don?

MR. ELISBURG: Perhaps for our next meeting, and it concurred to me that perhaps it would have been useful for this meeting, that someone might have appeared, for example, the Acting Assistant Secretary. I think we have a number of questions here that are really political questions. And I think that is what advisory committees do, deal with not necessarily, they deal with policy not necessarily political. And I think we are, in fact, asking Paul to respond to issues that are more appropriately responded to by the acting political leadership of the, this part of the Department of Energy. And I just want to note for the fact that the, I am not criticizing the absence of the Acting Assistant Secretary, but I think it would have been helpful to us in our discussions involving some of these policy issues.

MS. SPIELER: If that is possible, I think it would make sense. We just may have to be partly folded into the question of where and when we are meeting, obviously.

MR. ELISBURG: Sure.

MS. SPIELER: Iris?

MS. POST: I just have a couple of things to say that, I really, as a member of this Committee I appreciate so much, Paul, you coming forward with some specific questions for us to answer. I have never been on a Federal Advisory Committee before. I have my own advisory committee in our state. And sometimes I get really upset with them when they tell me what to do or what I anticipated being told what to do. And so, I appreciate your patience sitting there while we are telling you what to do, when you have all these other things coming at you as well. And I appreciate that very much, because I have been in your place.

DR. SELIGMAN: You are very kind. Thank you.

MS. POST: So, I guess, I felt a little frustration, not knowing exactly what specific questions or issues you want or you need advice on. And so, I think this is extremely helpful when you are telling us, these are the kinds of things I need help on, or I would like the Committee to look at and advise our agency on. And I think that is extremely helpful and I really appreciate that.

And lastly, I guess, you know, I know you are in a very difficult position, the whole Government has changed, at least in the leadership, and I appreciate your willingness to come forward and answer questions. I think as Don said, that, you know, are probably more appropriately answered by someone else.

MS. SPIELER: I am going to pull the Committee back with, I, I know there have been some frustration sort of aired here, but we really need to answer the questions that Les has on the table right now in order to allow him to leave. So, if the Committee members could focus on those questions for now, we can come back to some of these agency committee issues after Les' departure.

Linda?

MS. RUDOLPH: My question is on measuring the effectiveness of the outreach program and I am concerned that in the absence of having good denominator data, it will be very hard to do that. So, I was wondering what the Committee's thoughts were about that?

MR. BODEN: Yeah, we actually did discuss the question of what, what the denominator or denominators should be. I mean, there are actually a number of things. There is one question about sort of generally of whether eligible people have been made aware of the program and understand, potentially eligible people understand. So, that, really the question there is what is the universe of potentially eligible people. And I guess I would ask sort of to what degree we have a decent measure of that, either globally or in some locations. It may be that in some of the locations that have surveillance programs we have better measures because people have tried to put together, put together lists.

Paul, would you --

DR. SELIGMAN: We have historically pretty good information about the number of people who have worked at our sites. But, we have very little information, at least until we started these formal worker programs as to how many individuals actually were ill and may ultimately been eligible for this program. So, I guess, it depends on the denominator that you are looking for.

MR. BODEN: Right. I guess the denominator I was thinking about would not be contingent on whether somebody was ill. For the outreach, it is whether somebody is, you know, currently alive and had worked at least for, you know, six months or some period of time at one of the, one of the eligible sites.

DR. SELIGMAN: I mean, we have the good fortune of having, you know, studies many of these sites, and have done cohort morality studies and have assessed the vital status of many of these populations.

MR. BODEN: Right.

DR. SELIGMAN: So, we have a pretty sense of their, not only their size but also what proportion are still living and for those that have died, what they have died from. But, that is probably the best source of information that we have.

MR. BODEN: Right.

MS. SPIELER: Jim?

MR. ELLENBERGER: In addition to giving us performance measures and evaluations of Department of Energy's Workers Advocacy's efforts and in the context of this law, we are also going to get evaluations and measures whether we specifically set out to do so or not on the performance, for example, of state systems.

MR. BODEN: Right.

MR. ELLENBERGER: And this I guess would fall under the category of timely feedback to system participants. But, I really don't have a question, but sort of, I would be interested in the Committee has given any thought to this, and that is that one of the real historic problems we have is the pretty abysmal way in which state, state laws have dealt with occupational diseases. And this evaluation performance measurement of this program is likely to tell us lots of things that many of us have strongly suspected for a long time. And there is probably going to be some reaction, not all of it favorable to those evaluations and measures. Have you talked about that at all?

MR. BODEN: Well, we certainly talked about trying to evaluate the performance of the state systems. You know, in some ways, all of these evaluations we do, they are going not be necessarily evaluating only one piece of the system. So, how well we do on getting timely and payment to people who filed claims, is going to depend on how the medical panels behave, how the

contractors behave and how the state systems act in those pieces that they are related to. But, certainly that, all those things would be part of what we would be trying to do.

MR. WAGNER: Yeah, timeliness and as a member of this panel, timeliness is one of the key issues that people talk about, but also the issue of fairness. And fairness, I think, really raises the question of state to state comparisons, both in terms of their own timeliness as well as the outcomes where people enter the systems with the same kinds of conditions, data, evidence, whatever, what happens to them. So, I personally think that it would be a reasonable outcome of any evaluation or ongoing monitoring to provide the kind of feedback that Iris was talking about, that would both benchmark what goes on under the best of circumstances, and provide information about what goes on in less than ideal circumstances.

MS. SPIELER: Clearly, this needs to be taken up by the state agency relations committee. We can't overburden state agencies with reporting functions that are greater, substantially greater than they already have, particularly for states with, that won't have all that many claims. And so, I think this requires some serious thought.

Other comments, questions, for Les?

MR. BODEN: Final, the final one.

MS. SPIELER: Okay. This is going to have to be the last one, yeah.

MR. SHOR: I don't think we discussed it fully in the Committee, but how to get information back from the states about what happened in the cases that went out of this, the DOE system into the state process and then how to get that information back into the plan for the states. So, I think we have to develop that.

MR. BODEN: Right. We have to develop a plan, what is the monitoring system.

MR. SHOR: Exactly.

MR. BODEN: Or do we have each claim monitored in some way whether or not it is in the state system. Yes.

MS. SPIELER: I think Les is about to abandon us without having the discussion about future meetings, so, do you have any idea what your available dates are in April? Can you leave a note with Judy or should we just --

MR. BODEN: I will, how about, I will e-mail first thing Monday morning.

MS. SPIELER: It doesn't matter. I mean, either we have now or we will do it by e-mail.

MR. BODEN: Well, actually I sort of had in my computer before I printed it. I am sorry.

MS. KIMPAN: Emily, Emily. This is Kate Kimpan, can I comment, just while Les is packing on the --

MS. SPIELER: Well, wait we are in the middle of something.

MS. KIMPAN: Okay.

MS. SPIELER: Okay. I am suggesting that we put off then the discussion about what we are going to do next, so where we originally had it at the end of the morning since we are going to lose Les. Sorry, Rick. Okay. Go ahead, Kate.

MS. KIMPAN: This is just about state evaluation. I am certain the people on the evaluation committee familiar with state laws know it, but for the writer group as well, I think one of the things that the Committee or that we all going to need to keep in mind is that since, when we interface with state statutes, we are going to provide the benefits that the state provides, comparing Iowa to Washington State, in terms of a dollar amount, etc., is going to create some difficulties. I think this is what Jim was alluding to as well, that the state differences. So, each success measure is going to need to be state specific, if you are going to look at benefits delivered and things like that. Because, if we are, if success is getting someone into the state system, but the state of X doesn't pay for a thing, it could still be a successful claim within that state, although that maybe a less desirable outcome to the recipient than if that recipient had had the good fortune to be in a different state.

MS. SPIELER: Yeah, thanks a lot, yeah, I think that is an important point and the subcommittee needs to, I think, address it.

My suggestion is, again, depending on Committee approval that we move forward to a discussion of the whole medical panel, medical evaluation and exposure issues.

Steve?

MR. MARKOWITZ: Yeah, I have 10 minutes and so I will present and if I am not finished in, but, I am sure I will be finished, but Greg or Linda can take over.

Thank you, Paul, for the three page list of issues for us to discuss, which was augmented by an additional two page list from Dr. Falco, which assured us that we wouldn't have the time to tell you what to do, but, just to consider your issues.

The first issue we discussed was what was the threshold for submitting a claim. And that is that the worker needs to suspect that they have an occupational illness. And that is the only thing that is required to initiate that process.

What is absence then is the worker does not need an occupational medicine evaluation already performed or does not need a physician to say that their condition is work related. This is different from normal worker comp in that sense. It is a more liberal entry criteria.

There was no need for a routine medical examination supported by Department of Energy prior to submitting a claim. That is to say most individuals interested who were ill, who believe they have a work related condition, will have been to a physician. Presumably most will have a diagnosis, which they will be able to put down on the claim form. There will be an important minority of people who are ill, who do not have a defined condition, whether work related or not, just a simple medical diagnosis. And that those people will need to be addressed by the system, either initial referral for a medical work-up or what Linda suggested yesterday, after some consideration by the physician panel support unit, that person then sends off for a medical evaluation. Not an occupational medical examination, but simply a routine diagnosis examination.

We discussed the idea whether the panel should work from a premeditated list of covered illnesses and we essentially rejected that idea. The legislation says that we are suppose to address, this program is suppose to address illnesses caused by toxic substances, and that should be the scope of what the panels deal with.

We had some discussion about the structure of the panels to really complimentary models were proposed. One was to have a national bank of physicians, probably a sizeable bank actually, who would spend part time working on this issue. And the alternative was to have site specific panels of physicians who would pretty much be assigned to specific sites. They wouldn't be local physicians per se. We spoke a fair amount about the Fernald Medical Panel, where three physicians, one from California, one from Ohio, one from New York are the medical review panel for the Fernald medical claims. The issues for the panel whether it be of a national bank or more of a site specific, were consistency across sites, that the reviews, it should be reasonable amount of consistency. Even if inaccurate, they should be consistently inaccurate across sites.

But, that there was also a great need for those panels to have as intimate understanding of the sites as possible in terms of potential exposures.

There was concern about efficiency, that if you had a national bank of physicians of that panel, that would be more efficient because they could, if there was over demand in one site, that the panel could be sort of shifted and resources put in that direction.

And finally in the structure of the panels, they needed access to specialities, medical specialities, pulmonary medicine, neurology, for instance, but also industrial hygiene expertise.

We discussed the standard of causality. Workers comp systems differ state by state and what they have is a causal standard. A national system can't deal with that kind of variation. There needs to be a uniformed standard across the program. We thought it should be that the illness is more likely than not caused by or contributed to by the exposure at the DOE site. So, that more likely than not threshold, and that it can be the cause or a significant contributing factor. Now, that may be more liberal than certain states. DOE would presumably need to make that part of their negotiations with the state workers comp system to accept that standard. But, physician panels can't really vary state by state in the criteria that they used and that the threshold that we are recommending is sort of a standard consensus in occupational medicine.

We discussed whether there should be a written diagnostic criteria for what constitutes either an occupational disease or what constitutes a disease, what is needed to, for physicians to call that this person has a specific illness. We thought that we should use, the panels should use existing criteria when they exist, when they run into a lack of consensus, then they are going to, on an as needed basis they are going to have to develop, the panels will have to develop their own consensus about a diagnostic criteria. But, it was really excessive burdensome

and unworkable to think that prospectively that the panels should work up a written protocol of diagnostic criteria.

Exposure criteria were more, or the exposure determinations are more difficult. And we discussed several complimentary approaches. One, obviously the panels need to access to the existing site specific exposure assessments. And that includes the former worker, the needs assessment worked up in the process of the former worker programs. Where the former workers surveillance programs were required in the first year to look at what was known about exposures at the facilities that are covered by that program.

And those screening programs should have updated information about exposures based on the screenings that they have conducted.

There needs to be a built-in occupational history form, in the claims process, but also access to interviews for problematic cases to get the kind of quality of information that is needed on difficult determinations about the extent of exposure.

The panels need access to industrial hygiene consultants, as I mentioned before. Most useful would be the independent industrial hygiene consultants who are familiar with DOE complex. And these can be, you know, contractors who have previously studied specific sites. These can be the industrial hygienist in the former worker programs, who again studied these sites. But, it is crucial that that information, that those people actually be available and their knowledge, the panels can use their knowledge.

And finally, we thought as part of the claims process we should ask a simple question of why the claimant believes that their condition is work related.

Did I miss anything?

MS. SPIELER: Questions, discussion from Committee members?

MS. MUELLER: I am little confused at the very beginning, I wasn't clear how, since they can go ahead and file a claim without having any medical evidence, that is fine. Then, then they are just going to use a regular treating doctor to develop the medical records that the panel is going to work from, is that what you are saying?

MR. MARKOWITZ: The panel exists to essentially examine the issue of causality. To bring that occupational medicine expertise, which largely does not exist at many of the DOE sites. So, what that panel needs is information

about exposure. And they need information about what disease that person has. Whether it is a specific occupational disease like asbestosis or whether it is emphysema.

MS. MUELLER: I guess I am not making myself clear. So, the, I mean, I understand all that. So, my problem is, you know, having done these things myself, in other, you know, physicians, that when you just rely on the treating physician to give you whatever it is they think is appropriate, you may not get the medical information that you need or want. And so my question was how are you going to deal with that?

MR. WAGNER: You know, I think, and this was part of a longer discussion yesterday also, this feeling that once a, a claimant puts their package and medical information, employment information, exposure information is assembled, if the medical information is inadequate to support a diagnosis then at a staff level prior to the time that it gets to the panel, there would be a kind of kick out referral for the development of additional information that would be appropriate to make a determination as to the diagnosis to confirm it. And the hope would be to assemble as often as possible, complete packages that would include all the necessary medical and testing information for the panel to make a determination. I think that, you know, this is actually an evaluation issue also. The percentage of times that the panel gets a package and says, this really isn't adequate to make a determination, the panel would always have the option of kicking the file out and saying, we need additional information, these specific tests, etc. Or in the most challenging of circumstances, I think we would recommend that the panel, that a physician on the panel or a physician selected by the panel, would be able to conduct a, you know, more detailed interview in order to be able to, again, develop the information necessary to make a final determination.

So, I think we counseled a level of flexibility, but also for the efficiency of panel work, that the assistance to the claimant be in the form of helping to assemble a complete file prior to the time that it was presented to the panel.

MS. KIDD-TAYLOR: I guess just to follow up on Greg's question from our discussions on yesterday, an example was given by Vikki of some of the problems she faced with her father being diagnosed by a physician, not necessarily like mid physician, and that illness not being identified as related to work. And some of the problems associated there.

MS. MUELLER: Well, I think it is just a really important part of it is that there has to be help for the claimant to figure out how to get this

information because I certainly don't know that it is inadequate and that is going to require a lot of error facing there.

MS. WELCH: But, the question of, there is, just to reemphasize, you can't say something is work related until you know what the something is. And figuring out what the diagnosis is, doesn't necessarily require occupational medicine expertise. It might require a pulmonary physician to go beyond some simple tests and actually do a CT scan of the chest or something like that. But, I think when people say that they were sick from work and didn't get compensated, it is often the causal relationship, not figuring out what was wrong with the person, but, then nobody is willing to say that it was related.

Now, there will be some cases where people have been to lots of doctors and not gotten a diagnosis. That is a kind of a different question. The panel can advise on that as well. Those cases may come to the panel, the panel staff will look at it, and they can't figure out whether they need more information or not, and then the panel would review it and say, no more information would help, you can't, you know, but those are going to be very few. I mean, I think we could, as was said as a group, we could figure out a great majority of what kind of diagnosis would be coming in, what kind of complaints people would be having and so that the panels or whoever sets it up, could tell the staff what kind of basic information each kind of case needs before it gets to the panel.

MS. HATFIELD: In a case where you have gone to, like say 14 or 15 doctors, and you don't have a diagnosis, where does the panel go from there? What would happen in that instance?

MS. WELCH: We didn't discuss that, I mean, I could take a shot at that, but you know, I would say if you had 10,000 claims you might have one or two like that. Because, I mean, I don't know, I mean, I hope medical care is a little bit better. There are people who have complaints and for whom you can't reach a diagnosis. And it is not a question of, the best examples say that, that everybody knows about is "Gulf War Syndrome", or multiple chemical sensitivity, where you could see 15 people and some people say there is nothing wrong with you, some people say you are totally disabled, because there is no diagnostic criteria to be used that and no consensus about the mechanism. So, those cases will be hard and they will have to go to the panel in that form.

But, then there are other cases of people who complain about respiratory symptoms at work, but they have actually never had the fairly high level diagnostic test that would tell you whether it was asthma or not or whether it is hypersensitive pneumonitis or not. And the, again, those could go to the panel

and the panel could say, we need this test, or we needed this test 10 years ago, and we are going to have to live without that information.

But, I think that there are sort of two different questions and I think the panel can handle those, (1) by getting more tests or (2) by saying, this is one of the cases for which there is no consensus and how are we going to deal with the causation issue when there is no diagnosis.

MS. HATFIELD: That is, I guess that is what, my main question was, I have talked to several people who are still without diagnosis after being sick for quite awhile with what appears to be, you know, a serious illness, just by looking at them, you can tell that it is. So, I guess my thought would be, you know, are we going to put them through another battery of tests to get there, we will have to in order to get, you know, to get a diagnosis. How do we do that? What do we do?

MS. WELCH: They may have had every available test, you know, I mean, if you have been to 15 doctors, there is a good chance that you have had an MRI of everything and a CT scan of everything else and several thousand blood tests. So, I think those will be the challenging ones for the panel. And I don't know that they will necessarily be a consensus. But, I would say it is very hard to say that something is work related if you don't know what the something is. If you can't reach a diagnosis, that is sort of a stumbling block. Now, sometimes the diagnosis is a work related condition, you know, lead poisoning, absence the lead level is sometimes something you can't diagnose. So, there are some things where you need to integrate the exposure and that it is an identifiable occupational syndrome. But, then there are, there are cases where people have something and you can't figure out what it is.

MS. HATFIELD: There are.

MS. WELCH: And it is, you know, I am probably speaking out of school, I am not the physician panel, I think it is very less likely those people will get compensation. Because you can't, if you don't have a diagnosis, there is no literature that would support a relationship between any exposure and that condition.

MS. HATFIELD: So, if they show exposure, but we have no defined diagnosis then they are just kind of out in the cold.

MS. WELCH: Well, you will get to --

MS. HATFIELD: For lack of a better word.

MS. WELCH: You will get to this level of occupational medicine specialist or pulmonary specialist, whatever is necessary to be sure that no diagnosis can be made. So, you can make sure that everything that is appropriate has been done and the people who know how to look for these unusual patterns of disease have looked at it. But, if you do all that and you still can't get a diagnosis, right, those people are out of luck. But, I think that is one in 100,000. I mean, I think you can, you can get there in one way or another, you can answer the question in one way or another without feeling like there is a mystery that can't be solved.

MS. HATFIELD: Well, I hope that, I hope that you are right and I hope that it is not the normal thing that we see.

I still think that we have to look at that and make sure that we go as far as we can absolutely go. And that is just --

MR. WAGNER: I think that one of the issues that the panel is going to have to struggle with is the fact that every person who is sick with a significant health problem, diagnosed or not, who worked in a DOE facility may not be sick because they worked in at DOE facility. And I mean, it is the, you know, constant challenge to any one involved in any occupational medicine situation. And, you know, there is, you know, somewhere, I was going to go through the papers here, there is a sense that this should be "science based". I think that was part of the, you know, the Executive Order that says, you know, I am happy that we are doing this because it will be fair, it will provide, science based, fair compensation for these workers who worked in the national interest. And I think that the challenge to the panels is going to be to have a broad view of, that tends towards the inclusive, but does, in fact, deal with the issues in a way that is credible and consistent and fair.

MS. SPIELER: I would like ask you a question as to whether the panel can sit or a couple of things that come to mind, I think because I am a lawyer.

Is, did you talk about sort of how liberally evidence would be construed and in favor of whom, first of all? And second of all, did you talk at all or has DOE talked at all about what happens if there is a negative, at some point a negative decision from the medical panel? Is that a reviewable decision and by whom, where does that fit into the process, because if it, if a positive decision from the medical panel creates a presumptive claim in a state system based on the DOE

contracting, then the medical panel is going to be the key decision maker on the acceptance of claims. And I just wonder if that has been thought about.

MR. WAGNER: We actually talked, I can remember in, at least a couple of us talked about the issue of reviewability and think that it is an important question. And it is probably, again, when we look at the agency flow diagram as to what happens where, there will always be a point of discussion as to whether or not that looks like it is reviewable.

And I don't, I don't think that the subcommittee of this Advisory Committee reached any consensus on whether or not a physician panel finding should be reviewable, and if so, how.

On the second question the, the question of liberality of evidence, I construe it somewhat differently. I think that there was a strong belief that the, that there is a real scarcity of exposure data and that it is critically important to have the worker who perceives himself to have been affected by their work, have a significant voice in a description, explanation of the reason that they feel that way and what the work conditions or exposures were that they felt that relates to the ultimate health outcome and have the panel consider that carefully.

MS. HATFIELD: Just one more synopsis, I guess, or what happens when someone makes a claim behalf of a family member who is now deceased? And they say that they were, when they died they died of an undiagnosed illness. Where does that does go? What happens, do we have any --

MS. KIDD-TAYLOR: That won't go too far, because if the person is deceased, and the illness that they had was not diagnosed, then it would be very hard to, unless you have --

MS. RUDOLPH: I think that there is still room for the panel to review whatever medical evidence existed at that time and then make a determination about, you know, what can we say or what can we not say and it is just going to have to be taken up on an individual basis.

MS. KIDD-TAYLOR: I am sorry, again, it goes back to what kind of exposure data do you have for that individual, because in some of these cases it, I have been told by Paul that there is the lack of exposure data that exists. So, if the person is deceased, how do you get information about the job, unless there are jobs similar, where there are other individuals who are diagnosed or sick.

MR. WAGNER: But, there are, you know, I think circumstances where a diagnosis may have been missed 10 years ago at the time that the person

was, you know, in the hospital and a review of the chest x-rays might reveal the presence of asbestos related disease, where that wasn't saw previously. And so, it wouldn't be, you know, always futile, but I think that there would be a pretty big hill to climb.

MS. HATFIELD: Well, we know that before the last year and a half that these, the diagnosis were not easily made and sometimes not made because of other reasons. So, I think we are going to see a lot of those claimants come forward and file on behalf of their family. And I guess I just wanted to make sure we included that in the things that we were talking about, about how we, how we move forward with these claims on people who have been dead for many years.

MR. ELLENBERGER: I think Vikki has raised some important questions here, and I am sorry Les isn't here, but there are other members of the performance evaluation committee. These are issues that we really need to be aware of and to develop some measurement of because I tend to think that it is a bigger problem than, than we realize. That we recognize and there is going to be a lot of these cases where we have survivors of deceased workers who don't have any diagnosis. We are going to have a lot of workers who have symptoms that can't be diagnosed. I mean, I see it in state workers compensation cases. And I hear about it from the DOE complex. And it is deserving of measurement and examination, if nothing else, so that we can, we can try to assemble more knowledge about how to deal with it.

MS. HATFIELD: I just, the people that I have spoken with and the people that have called me asking for help, there have been several families that have called with that scenario, that their dad is gone. He has been gone for 15 or 20 years and he never worked anyplace but the Department of Energy. And they didn't know what was wrong with him when he died. They couldn't help him. They didn't know. So, in my mind, I agree that I think we are going to see a lot more of these. I think there are going to be a lot of these cases that come forward. And we just have to, I don't want us to write them off. I want us to make sure that everybody gets equal treatment and consideration just because we didn't have the diagnosis then, or the ability to diagnose then that we have now. We still have to go back and look and make sure that we give them every opportunity because a lot of them have already lost a lot, besides losing their family members, they have lost other things. They have lost, sometimes they have lost their homes. Sometimes they have lost a lot of things because their partner or their dad or their mother or whoever it was, did not get a diagnosis and could not get help.

MS. SPIELER: Laurie?

MS. WELCH: Two thoughts. Sometimes that, you know, it will be long enough ago that the records are gone. And because many times I think those of us who practice occupational medicine often have the experience that the information is actually there in the records, it is just someone missed it, you know, so it is not like it is, it shouldn't have been a mystery for so long, but sometimes it takes the right person looking at the information.

But, you know, if people died 20 years ago, it is very likely that the, you are not going to be able to make an adjudication in that case. You just not going to be able to.

The other thing that I would mention and we can look at as we go forward is the VA has been struggling with the issue of compensating people who served in the Gulf War. And have developed a process for looking at the evidence and looking at, I mean, it is a, it may help inform some of these questions about people who had diagnosed serious hazardous exposures. So you think that they were at risk for developing something, because you can document some kind of major overexposures that they had, and then they have ill defined symptoms. The VA has developed a process for dealing with some of those claims. And I think as the next tier, after we get through this, sort the basic of setting up the panels, I think that is, it is a decent model to look at.

MS. MUELLER: I just wanted to mention some issues about the causality information that was brought up. I think that the standard, of course, is the general standard most of us use and so I don't have a problem with the standard per se. But, I do have a problem with us not making sure that we are helping the person get care in that particular state. And so, I don't really see how you are going to get out of answering questions that are specific to the states. And, you know, one way we might try to expedite this, I mean, if you don't do it what is going to happen, I think, is the questions are just going to come back to the panel again, saying, well, you didn't answer it the way we need it. So, one way we might look at it would be for, since these agreements are being made between the states, is that when agreements are made between the states, the states can specifically say, well, we actually have these three additional questions or whatever, that we would need to have answered to get access to particular parts of our system. And then you would have, the panel would have that very distinctly written that they could answer. And because other wise, the person wouldn't get access to that state workers comp system.

MR. WAGNER: I think we actually discussed both models to see which would work, and would clearly be most efficient if the state in the agreement, were capable of agreeing with the Department of Energy, that a determination by the physician panel by definition in that state covered all issues.

If the state is unable to do that, then it wouldn't be all that difficult to present the states specific questions to the physician panel in association with each file. So, I mean, it could go either one, but I think that the group have been talking about it thus far, felt that it would be more efficient in terms of consistency of treatment as well as consistency of process, too, and fairness across states if it were possible for the states to be sufficiently flexible to agree to get over the specific questions and accept the physician panel determination.

MS. MUELLER: Somehow you are thinking that the states have some kind of power that we really don't have to do that.

MS. RUDOLPH: Well, I mean, I think you are raising an interesting question. I am not sure, you know, that it is, I don't know enough about the difference states to know whether it is an issue if there is not contested claim in terms of the contractors accepting liability. In our state, if there is not a contested, it doesn't matter. The state doesn't really get involved at least in determining the causality.

I would be a little leery, frankly, of having, I mean, we anticipate this is going to have to be a fairly large panel of doctors. I would rather set a uniformed standard then have some doctor in Colorado making a decision about a particularly California based legal concept, never having had that experience. So, in a way I would rather have some system where if there is particular medical, legal questions that need to be addressed in a particular case, create a way to refer them to somebody that is familiar with the legal concept in that particular, the medical legal concepts in that state. And let the panel have a more uniform approach that can be applied consistently across the country.

MS. MUELLER: Well, I just think we need to work some more on this because I think there is a big problem and these, we have already been informed in our state there will be contest of some of these cases that are not, that are not under the DOE contractor. And we want them all to get paid, we just don't want some of them to get paid. And we can't intervene from the state side, because there is state statute. So, the more we can give the system, so that the person can get the care, I mean, that is really what we are trying to do here. And so, that is why I think we should try and figure out and what that system should be, exact, I don't know. But, we could, from the state agencies side, try and look at this some more and from the contract side.

MS. WELCH: Can you give me an example of what kind of thing a state would want that another state wouldn't want?

MS. MUELLER: Yes, the, out of the paper that, that thing that I circulated, for instance, to get into certain injury funds in our state, which the, which would be the easier way for the worker to get care, you have to have a certain date of disability, certain, you have to have certain full disability, certain dates. And they look at causality slightly differently. So, we have several different programs that are specific for occupational disease. And it would probably be less likely for those people to contest the claims if they knew they could get into these programs. But, we need the specific information to get them in the programs. Just that, just the fact that it is causally related, will not get them into the program.

MS. WELCH: Because one of the things we did talk about was, because some states compensability depends on impairment being present. And but, as a group we decided that was, the physician panel should not deal with that, I don't think. That is, the physician panel should determine causation. And then if an additional step needs to be determined, because and I think this has to do kind of with the contractor relationship, because it may be that the, you know, in the State of Maryland, you have to have a certain level of impairment before you get compensated. But, the DOE and the contractors could do it differently. They are not bound to only compensate those particular level of impairment, maybe. Otherwise it is, I mean, the physician panel, I don't think can address the state specific issues. It may be that once it is addressed in this physician panel, you need a state specific physician panel to answer these other questions. But --

MS. RUDOLPH: Well, I mean, I think in many of these, I have been trying to figure out, well, how is this really going to work? And particularly for a younger worker, you know, who had their, who is not retired yet, and who has some level of disability, there is, I don't see a way that the level of permanent disability and that piece of an award that is going to be made for workers comp could possibly be determined by some physician panel. That is going to have to go through some, the same kind of medical legal evaluation that every other claim goes through at some point in time. So, and there is a variety of other, you know, kinds of medical legal determinations that I just don't think can possibly rest with the panel. So, I am just agreeing with, I think what the panel, the group felt that we have to fairly narrowly define the role of the physician panel.

MR. ELISBURG: What are we confronted here with where the, either DOE or NIOSH is with respect to their views on how this is suppose to work? We are having a great conversation here, but I don't know whether this conversation is relevant at all to where these folks are.

MS. SPIELER: I actually, I was kind of waiting to have this last piece wind down. I think there are several, it seems to me what I am hearing is that there are several different pieces to this medical panel question. The

structural question, who, how many, where is the piece that has to be, it seems to me the head of the list in order for DOE to give HHS the necessary information for NIOSH to go out and start recruiting the physicians for the panels. And I wondered whether it would be possible for the subcommittee to divide these two issues up, because I assume, Paul, and correct me if I am wrong, but you have to have that information to HHS fairly quickly in order to get the panels up and running quickly.

DR. SELIGMAN: Yes. It is not only who, how many, where, but it also what is critical because the numbers depend upon what it is you are asking them to do. I think that it was our consensus, you know, recommendation for this Committee that these panels be looked at as physicians who would be making a determination as to whether there was a relationship between exposures at work and a health effect that was suffered by the worker. And that there would be, the primary focus and it wouldn't be disability determination, wouldn't be the answer. So, the things that would be sort of threshold determination to get them to the next step in this process. This would be a point of assistance that many workers, as we understand are lacking, which is a competent medical opinion as to whether or not there is a work related health condition. So, that is kind where we were and then, and I think, there were different models that we could probably fairly quickly, over the next couple of weeks, try and reach consensus on this question, again, depending upon the number of claims that were anticipated, what sort of level of staffing it would take in order to do that.

We also did look not just at the panels, but also at the pre panel kinds of work that would need to be done. And I think that that again is, it is critical information for DOE, also for DOE to be able to get HHS beginning to appoint the panels.

MS. SPIELER: Paul, is what is being discussed here consistent with the, with what you have been planning?

DR. SELIGMAN: Yes, very much so.

MS. SPIELER: It seems, I mean, there seems to be this one critical piece out here that Kathy is raising, that also relates to the question of, I mean, if all the claims get accepted, then that is not an issue, as big an issue, and so, the question of what it is that you are hearing about intense to contest claims would actually be very useful information for the committee that has not yet met, but probably will meet fairly soon with regard to contractor insurer relation, so that we can see if there are ways to overcome the concerns that are being raised by the people you are hearing from and because the more we can maximize the acceptance of claims, the less, the sort of specific need to answer state based claim

questions is before us. And then it seems to me that there would be this question of whether we ask them nationally sort of set up medical panel to do that or whether DOE in some way convene sub panels in states where there are specific issues to answer this sort of follow on state specific questions, which it seems to me would be one option.

Would it make sense then to ask the subcommittee, does that make sense to you, Kathy? It doesn't seem to me like we are going to be able to fully resolve this this morning. And so, what it seems to me is that, Greg, if you and the rest of the Committee think that over the next couple of weeks you could really work with DOE to sort of, really try to formulate at least the instructions that get sent over to HHS, that Ted and the folks at NIOSH can start looking for people, which maybe something of a barrier, I suspect. So, clearly that needs to be on track. And so, I would suggest, depending on how the rest of the Committee feels, that we encourage that that to occur between this meeting and our next full Committee meeting, because I don't think we want to hang it up by sort of waiting for a full committee meeting and so, if there are members of the Committee who would like to be part of that, I think that you should let Steve know.

Linda?

MS. RUDOLPH: I just want to make one comment on that, because there might be some, some input from the broader committee.

How you structure these committees, panels, you know, there is really efficiency questions involved. So, the Fernald Committee, for example, is three physicians and those three physicians review every case and then reach consensus on every case. If you are really thinking that you are going to have tens of thousands of applications in a short period of time, that is probably not a very efficient method. And we also talked about, for example, could you have two people review each case and then if they agree, that is it and if they disagree, it goes to a third person, which would, you know, significantly reduce the work load involved in the review of each case. But, I think we might need a little bit of guidance from Paul on this efficiency issue because there is some trade off involved.

DR. SELIGMAN: Happy to provide that guidance. I just want to make one quick comment just so the panel realizes that this, the establishment of these panels is the only part of the legislation that requires the Department of Energy issue a regulation as to how these, these panels operate. And again, consistent with what my colleagues are doing, it is our hope that we will have such, you know, regulation announced in the Federal Register by May 31st.

MS. SPIELER: That is certainly daunting. Do you need to have the regulation in the Federal Register before you can send any requests over to HHS?

DR. SELIGMAN: In terms of what, beginning to set up the panels?

MS. SPIELER: Yes.

DR. SELIGMAN: I certainly hope not. We are actually meeting with our lawyers on Monday morning to discuss some of these very issues.

I didn't mean to kill the discussion here. I just thought it was, it was important to point that out.

MS. KIDD-TAYLOR: So, Paul, the staff is already working, the staff has already drafted then the regulation regarding the medical panel?

DR. SELIGMAN: No, not at all.

MS. KIDD-TAYLOR: Proposal.

DR. SELIGMAN: It is at the stage that the Committee is dealing with now, which is thinking about how best to, you know, both structure and, you know, basically how to manage the process.

MS. KIDD-TAYLOR: So, then the subcommittee should get information in our recommendations to you then on proposals for setting up the medical panel.

DR. SELIGMAN: That is exactly what we are looking for.

MS. KIDD-TAYLOR: Okay.

MS. WELCH: One other quick question, Paul. If you could give us some guidance of how specific it has to be for the regulation. If it has to be a specific, do we have to answer all the questions that you had on your question list?

DR. SELIGMAN: I sure hope not, but I will try to answer that question for you, Laura.

MS. WELCH: Okay.

MS. CISCO: I have a question and maybe I might not understand this right, but, the panel is just going to determine causation, right, that is what the Bill requires. If you, like in the State of Ohio, I just, I might be stretching a little bit, but I need an answer. If in the State of Ohio you have to be disabled before you can receive compensation for asbestosis, disabled. Would they fit in anywhere where, if you have got to go by the law, how does the Federal go with the state? You still have to go by the law and they are still going to have to be disabled before they are entitled to anything, right?

MS. SPIELER: Presumably unless there is an agreement between DOE and the contractor to pay benefits that wouldn't be required by the state system. And I think that that is sort of the question of how this contracting works. But, the assumption, I think built into the statute was that this provide causation information, but the state would be obligated only to pay what it would normally pay in a claim. And so, if there was no disability and the state required disability then they wouldn't, then it wouldn't be a good claim in the state system. And there is enormous variability on lung diseases to exactly what you have to be able to show to get initial compensation in the state systems. I mean, unless it is really important and -- Okay, go ahead.

MR. ELLENBERGER: I have question. Jeanne, in Ohio, if you are not judged to be disabled, can you still obtain medical benefits as a result of the diagnosis?

MS. CISCO: You can, but it is my understanding that there is actually no, nothing medically they can do, and many of these people are retired, so their claim is only going to stay open six years. If they file now, the claim could die before they ever needed it. So, you know, we are in a Catch 22 there.

MS. SPIELER: Yeah, we talked some, I think about that in the state agency subcommittee and a little bit yesterday. There is this kind of Catch 22 problem in some of these states and also it would have to do with how the statute of limitations meshes with these kinds of questions in those states. And it seems that this would be an issue that either would have to be resolved in the contracting with the contractors or in those cases that are litigated, we need that very specific information on each state in order to make a decision about, or for the Department to make a decision about what can or can't be put into the MOU that might, the Memorandum of Understanding with the state, that might attempt to deal with some of these questions. But, there are some very serious legal questions from the states' point of view that Iris raised yesterday about, you know, the extent to which states can waive statutory jurisdictional requirements and so, this is actually an incredibly complicated problem, I think from the, from the workers' standpoint in those states.

MS. RUDOLPH: I just, this just is a reminder to all of us and many of us don't really need a reminder, but of the extent to which the state compensation laws inadequately intrust the whole issue of occupational illness, but I would hope, you know, I mean as a, just a person on the committee, that there would be some way that we could use this opportunity of interacting with a bunch of states where there are these barriers to occupational disease compensation to put out some kind of a report, I don't know from where, on what the barriers are to occupational illness compensation that would stand, not just to address this population of workers, but all the other populations of workers.

MS. SPIELER: The second interim report, huh.

MS. POST: I think as Jim Ellenberger can attest, there is a huge reluctance in the states to be criticized about our laws, insofar as they are inadequate compensations for injured workers. And I would really, we are going to have enough trouble getting some states to agree to MOUs without adding another piece to this.

MS. SPIELER: I absolutely agree with that. I think that to the extent that that kind of report ultimately issued, it is unlikely to be the work of the formal Committee or the staff members of this program.

The laughter by the way for those of you who don't know, is that Glenn Shor was the, was a primary author of the interim report to Congress on occupational disease compensation in 1980. And it stands as the only existing sort of national report on the status of occupational disease compensation. So, that was what the laughter was about.

I am going to move this along here. My understanding is that we have now referred this back to subcommittee with hope that you will communicate with the whole Committee as well as the staff so that this can move ahead before our next meeting.

We are now over time for the public comment period. I wanted to ask if, well, there were two things actually. I didn't at the beginning of the meeting today ask people to introduce themselves who are here. First, though, I would like to ask if there are any people who would like to make comments from the floor?

(Pause.)

MS. SPIELER: Could you just very quickly introduce who you are so, I think there is a microphone here that you can use.

MS. GRIFFITH: Hello? Hi, I am Judy Griffith from Department of Energy, Office of Information Management.

MR. OPPENHEIMER: I am Alec Oppenheimer from Department of Energy, Office of Information Management.

MR. EGAN: Jeff Egan, Office of Worker Advocacy, DOE.

MR. FITZGERALD: Joe Fitzgerald.

MR. CHASE: Paul Chase from JAYCOR.

MS. PONTON: Jean Ponton from JAYCOR.

MR. OLSON: Mark Olson with the Idaho National Engineering Environmental Laboratory.

MR. DETTLING: Doug Dettling, I am with the Department of Labor, Energy Employees Task Force.

MR. OATES: I am John Oates with the Radiation Exposure Compensation Program in the Department of Justice.

MS. EPSTEIN: I am Liz Epstein, I am also with the Department of Justice.

MR. MARTINEZ: I am Len Martinez with Kaiser Hill from Rocky Flats.

MR. FALCO: Joe Falco, Office of Worker Advocacy.

MS. SPIELER: We have a number of issues before us that I think actually are going to take the rest of the time that we have, that are somewhat logistical, but also substantive in nature.

There is the question of when and where this full Committee next meets and also subcommittee meetings and support for subcommittees and the question of whether subcommittee want to add additional members. Now, it is my understanding based on conversations with staff that if subcommittees add subcommittee members, and there are meetings in which those subcommittee occur, that the Department will be providing support for members of the subcommittee to attend the subcommittee meetings. And I talked to staff about

that yesterday, because I know that came up in at least one of the subcommittees yesterday.

And there also has been a question raised, particularly by Vikki, but, which we discussed last time of having some meetings at sites and having, in conjunction with committee meeting, some kind of public meeting at which people could come from the area and talk to us about their concerns about the program as a committee. So, we have that set of issues, I think, that we need to discuss.

We also have, there is this, there was these exchanges earlier today about the transfer of information and I personally have sat on both sides of this fence and both of them unpleasant. So, I don't, but, I guess there was, there is sort of the question of how we can make sure that Committee members are getting the information from DOE and the development of documents from DOE as they are developed so that they can be discussed and we can have real input into it. And I have got sort of a list of things that have come up, the implementation plan, the development of a flow chart, a possible review of draft, memorandum of understanding or a draft of a memorandum of understanding at least by the subcommittee dealing with that. The subcommittee charges and notes that should be broadly distributed. The, the forms that are being used for dealing with the intake on these toll free telephone calls and any subsequent form development that is being worked on.

And, any, I think any formal memorandum that are sent out to contractors or carriers or Department of Energy, Atomic Energy worker sites or Beryllium vendors or that information. Now, some of that maybe best routed through the particular subcommittee dealing with the issue. Some of it may best go to the full Committee, but I think that we do need to sort of work out a better information transfer process so that there isn't any frustration on the part of the Committee members. And if, and if, Paul, you and staff feel there are certain things that you can't share, I am sure people will be very respectful of that. But, I think it would be probably a better process if we were clear about that, you know, these are, we have developed some things, but we aren't in a position or we feel strongly about not sharing them. We have these other things, and here they are. That might be a sort of more reasonable way to deal with those kinds of information transfers.

And then there are the specific questions that have come up that are still on the table, what about the scope of the non contractor program and how should DOE be dealing with it. What about the payment for medical evaluations and when, at what point should there be an expectation that DOE will pick up the cost of additional development on a claim.

So, I am not exactly sure how to proceed with this. I would be happy if, Paul, you are willing to try to individually with you by correspondence, figure out this information transfer thing and then let the Committee know where we are on that, if anybody on the Committee has strong feelings about it, maybe you could send an e-mail to me and Paul, so that we can just work this stuff out so we have better clarity about what is going out to whom, when.

I assumed that, but that is a good point, the sort of development of regulatory language.

Rick?

MR. BLEA: Just real quicklike.

I think all the information, rather than just going to maybe to some subcommittee or some sub panels, I think the information should be distributed straight across the board to everybody. That way everybody is on the same wave length. And also along with that information, I think Paul should include questions to us if there are unanswered questions that the panel hasn't addressed, so we need to address those as well. It is a two way street here. So, along with all that information, if Paul has questions to the panel that hasn't been addressed or hasn't been answered, he needs to let us know and then we need to address those issues as soon as possible as well.

MS. SPIELER: Okay. Don?

MR. ELISBURG: I have two things I would like to raise and I am going to have to leave in a little bit.

The most important one is, I suggest, I think we need to consider before we get out of here, that the Advisory Committee needs to send a, some kind of a formal communication, probably a letter, to the Acting Assistant Secretary or whoever, maybe the Secretary, laying out our concerns and recommendations on a couple of these policy matters before things get locked in stone. Particularly, I am concerned about our long discussion about the initial payment, the payment for the medical diagnosis, when that triggers in, and the fact that claimants should not have to bear any of the burdens of these costs. Perhaps that is also true in terms of our comments, discussion yesterday, about generally claims development obligations. There are probably several other items, perhaps the question of doing what you can for the Beryllium and Atomic workers and perhaps something on where we think the medical panels ought to be doing their

work. How many of these issues you would, you would put in the first cut or the first letter to the Secretary, I think is obviously a matter of some, a lot of discretion that you would have, but at the very least I think we need to go on record about the payment of claimant's costs because that appears to be a significant budget item that the Department has gone south on or at least has not gone north on. And I think that needs to be addressed fairly quickly.

Can I just make my second request? My second request was somewhere along the line I would like to recommend that the subcommittee on contractors and insurance, etc., actually have a physical meeting in Washington, soon.

MS. WELCH: Point of clarification was, you may be in the position to know what a strategic move is. I am not, was your question to say, write a letter to the Secretary and say, we have decided that this is what you should do and you have to find the money for it or we raise this as an important issue you have to think about.

MR. ELISBURG: No, I think we ought to, my opinion is we ought to say this is our opinion of what should be done. I don't think we are writing the Secretary saying, this is something you should think about. I think we write the Secretary saying it is the position of this Advisory Committee that this was our understanding of what this Act is all about and this is what is necessary to provide the appropriate support for claimants in this program.

MS. WELCH: Well, then it is, require those things to write the Secretary about, would be require some Committee discussion, because we haven't discussed those issues as a committee, and reached a consensus on them.

MR. ELISBURG: God, we discussed this about an hour yesterday, I thought we had a consensus.

MS. WELCH: I don't think --

MR. ELISBURG: At least on the issue I am raising about who pays for these medical exams.

MS. RUDOLPH: I think we really need to decide what the kind of medical exams are that we are talking about. And I agree with Laura, that, you know, I think we agreed conceptually that there are some role for giving people financial help in getting medical evaluations, but I think we need to determine, sort of define under what circumstances payment for medical evaluations is appropriate.

MS. KIDD-TAYLOR: I think that can be a question on the letter or a sub portion. See, what I am thinking as a committee, an Advisory Committee, we have to have some formal way of giving advice. We have sat here for the last two days talking about various issues on the floor and at this point, to move anything forward as a committee, or an advisory committee, there has to be something concrete that we are saying written to either the Director of the Safety and Health Environmental Programs or the Acting Director of this position or to the Secretary. And on the issue of compensation, we are not giving the specifics of that at this point, but we are recommending what Don just mentioned. And I don't see any problem with that, because we have discussed and I thought we are at a consensus on this what we feel should happen. The same for those workers, the AWE and the Beryllium workers, that are not necessarily covered under the current language. What is there to discuss?

MS. SPIELER: I guess the question is in part the specificity of the language in such a letter. It, I guess I haven't run these meetings as yet with formal motions and directives. And the reason I actually have not done that is that this is a beast in the manner, in the process of becoming, which is a very different kind of situation, I think, then, most of the situations that some of us have been involved in where we are pretty critical of a program coming in if we are on the Advisory Committee side or pretty defensive if we are on the agency side, but, I guess, this is a very important issue of process for this committee. And I actually am not certain that we have discussed the second question that Paul raised today at all. The question of exactly how, I am not sure we don't have consensus on it, but I don't think we have discussed the question of how Beryllium vendor and Atomic Work employees claims should be treated in contrast to DOE contractors. And I also heard at least some discussion about the point at which the Department's obligation with regard to the payment of medical evaluation might be disputed.

I actually am inclined to say that we should set our next full committee meeting fairly soon and that at that meeting, we should reserve a component of the agenda for specific action items that we feel need to be voted on and then, and drafted in some way, so that we have a statement from the Committee. I actually don't feel comfortable going out and drafting a letter to the Secretary at this point on these issues and if we try to draft a letter by Committee, by sending it out and taking, it may take us until the next meeting to do. But, I will take guidance from the Committee on this issue.

MS. KIDD-TAYLOR: I guess the question that I have we can't figure out, we have not discussed the specifics, but in a very general sense. Could there be sort of an outline of some of the Committee's concerns that we feel should be addressed by the Department of Energy?

MR. WAGNER: I think strategically it is quite clear that the areas of significant concern that we have, which are actually consistent, I think, with areas of significant concern of the people who are in the program, have been identified in the course of this conversation, that the real critical issue does come with the details of where you draw the lines on a spectrum where there is a decision point. And I don't think that we have the, I personally prefer to save our fire, if you will, for framing what it is this Committee believes to send to the Secretary, when we have clarity about, you know, specifically on medical payment issue, wherein the claims process we think that the Department's responsibilities ought to kick in and why. I am not prepared to answer that question and reach consensus today.

MR. ELISBURG: Well, I have a serious concern that the train will have left the station and there will be interim final, interim final regulations from both agencies in place while we are deciding whether or not it is appropriate for us to let the policy people, who are not attending this meeting, know that their Advisory Committee feels strongly about some issues. Now, I, I, in terms of, in terms of whether this is done by another meeting, how you want to deal with it, whether or not you want to vote particularly today, I have no, I have no --

MS. SPIELER: I have a point of information question. Paul, you said that the only thing you felt you had to get regulations out from DOE, were the medical panel issues. Are there any --

DR. SELIGMAN: That is correct.

MS. SPIELER: Are there any other regulations that are currently being contemplated that would deal with any of the questions that we are now debating?

DR. SELIGMAN: No, there are not, although there is, since we are, you should be aware that since we are responsible for compiling the facilities list that identify the beryllium vendors and the atomic weapons employers, we are now giving some consideration to, as to how we develop an administrative process within the Department for people who wish to appeal the information on that list, such as a claimant saying, you know, I did, I know for a fact that I did work at the time in my company for these Atomic Energy Commission and yet your records don't show that in the Department of Energy. How, how can I, you know, resolve that or that the dates that you included on that list for my company don't really include the dates that, you know, I worked on a particular process and I know for a fact that I did. So, we are not required by law to develop regulations for that, but we will need some process to resolve some of those issues internally. So, that is another issue we are grappling with internally.

MS. SPIELER: Are you considering regulations that would deal either with the payment for medical evaluations or the treatment of the worker claims involving these other facilities?

DR. SELIGMAN: Inasmuch as the guidelines for the physicians panels may include that kind of guidance, the answer would be yes, particularly if, for example, we, in the regulatory process we define a process whereby the panels may decide to refer individuals for additional examinations or diagnostic tests, in that context we certainly, you know, I can see where that payment issue could certainly fit in that, in that context.

But, the other one that you raised, no, we have not.

MS. SPIELER: Is it possible, is it fair to say that there is a consensus of this Committee that if the medical panels ask for additional medical evaluation, that that would be paid for by the Department of Energy? Does anyone want to put that in the form of a motion so that it is clear in terms of the development of these regulations that that would be a component of that?

MS. RUDOLPH: So moved.

MR. ELLENBERGER: Second.

MS. SPIELER: All those in favor?

MR. ELISBURG: Excuse me. May we have some discussion?

MS. SPIELER: Discussion on the motion, I am sorry.

MR. ELISBURG: I think that that is fine as far as it goes. I think it does not go far enough. I think that any examination a claimant has to have by way of medical diagnosis, evaluation for purposes of developing a claim ought to be underwritten by the Department of Energy or the Department of Labor. And that is plain and simple. I do not think claimants should be forced to pay for the medical costs it is going to cost them to process a claim in this system.

MR. WAGNER: To help me understand how you are thinking about this. If a worker files a claim, you know, goes into the, you know, one stop shop in his town, files a claim, and says, I think I am sick from work. And as part of the claim's intake process there is a request, well, you know, what physicians have you seen, would you sign some medical releases, the claimant says, haven't seen any. It is your feeling that walking into this office entitles somebody to a

comprehensive medical examination in order to determine the presence of an illness, is that right?

MR. ELISBURG: Pretty close. I think if it looks like somebody was an employee, you know, met some of the, some kind of a criteria other than just somebody, you know, wandering in, and that there needs to be a medical work-up, that indeed for purposes of that, of that issue, the answer is yes. I think that is what the statute says.

MS. WELCH: I would say that those, I disagree with that, so, I don't think there is consensus on that issue. I suggest that it doesn't mean that, if we vote on what was proposed, it doesn't mean we couldn't expand it, because I don't think we really have time to discuss, I should let you, the Chair, but, if we have to stop in 10 minutes, we really don't have time to discuss that. But, whether it would be acceptable to you to say, at a minimum, you know, we will do this. So, that as the panel goes ahead and constructs more specific thing, they know they have the Committee's blessing and authority to put in there that, you know, those exams will be paid for. And the next time we come, we could discuss where the other threshold is.

MR. ELLENBERGER: We spend some time yesterday discussing and actually Don read the statute where the Department has a responsibility to help claimants develop their claims. And I think in the reading that Don is suggesting and that I happen to agree with, that would include medical evaluations to achieve diagnosis or non diagnosis. I don't think, Don, that you are talking about retrospective costs being paid. I don't know that for sure, but I --

MR. ELISBURG: Sure, I am not talking about going and paying all the doctor bills that they have had for the last 25 years. That is a different claim.

MS. SPIELER: I actually, I am not sure what my rights are at this chair here, but I have a problem, because we have to end this meeting, because the Federal Register notice requires us essentially to end it at the noon hour. There is 10 minutes left. The reason I had proposed the interim solution that I did, I didn't move it, but suggested it, was simply that the issue had been raised about the development of interim regulations that might foreclose our going forward. If on the other hand, we need to have a full Committee discussion of the entire scope of the payment of medical evaluations, I would submit that we don't have time today. And because there clearly is not consensus and nobody has put forward a motion or an amendment that, for a vote at this point. And we don't have a full, we won't have enough time to fully discuss an amendment and further motions at this point. Which is why I suggested initially that we have a meeting fairly soon. I mean, fairly soon on the order of, you know, a month to six weeks, not fairly

soon like tomorrow. So, that we, and put on the agenda specific action items of concern that are emerging from these discussions and from the subcommittee meetings and set aside a time on the agenda for action on those items. Now, I look to the Committee probably because I don't know Roberts Rules of Order well enough. I look at the Committee for some guidance here on how to proceed.

MR. WAGNER: I think that there are actually is a motion on the floor. There has been discussion, there has been, what I heard to be a suggestion of a minor amendment to it, which if it is acceptable to Linda, say at minimum, was Laurie's suggestion and that we can bring this to closure. I mean, I just move the, the question.

MS. SPIELER: Well, first you have to call the question on the amendment and then we can call the question on the question. Do you accept my amendment? Accept my friendly amendment and then -- Anybody can call the question. I call the question.

I am sorry. The seconder of the primary motion has to accept the amendment as well. The amendment is to say that at a minimum the medical evaluations requested by the medical panel will be paid for by the DOE and the, and I assume that the discussion of payment of further medical evaluations will be postponed to a later date.

MR. ELLENBERGER: I accept the amendment.

MS. SPIELER: Is someone calling the question?

All those in favor of the motion as amended say aye.

(Whereupon, a chorus of ayes was heard.)

MS. SPIELER: Opposed?

The motion carries unanimously.

Does the Committee feel that this needs to be communicated to the Secretary or the Assistant Secretary or is communication to -- sufficient at this time?

DR. SELIGMAN: I think a formal communication is always better, but I clearly heard the message and certainly any drafts of the regulations that we, you know, begin to develop will certainly include the recommendation of the panel.

MR. ELISBURG: I hear that as a suggestion that as high a level as you can write a letter to would be helpful.

MR. SHOR: I would add that in that formal communication we suggest highly that the representative of that Administration be at the next meeting.

MS. SPIELER: I will draft such a letter and I will send a draft out to the Committee members before I send it and I am assuming that I will send it, well, to the Secretary with a copy to the Acting Assistant Secretary. And I will look for any input from Committee members as to both content and tone.

Okay. There are variety of other questions that are before us that I think need to be taken up by the appropriate subcommittees. The scope of the non contractor program, I think is a very important one and needs to be taken up by the, I would suggest the Committee on Claims Processing, which is chaired by Don Elisburg, who unfortunately just left the room.

The question of payment for medical evaluations is a question that I think needs to be taken up as well by that committee since we have resolved the payment for medical evaluations that is being, that are being considered by the medical panel, should be paid for.

There are a variety of contracting issues that need to be discussed, carrier and contracting issues in terms of how to remove issues and barriers for the acceptance of claims. The Contractor/Insurer Relations Committee that will have a couple of representatives from the carriers subcommittee members and soon will have hopefully a couple of representatives from contractors as well. We will attempt to schedule a meeting at, if we can a face to face meeting that will discuss these issues as quickly as possible and I would ask Dr. Seligman, if you would just make sure that people in your shop and in the contracting shop, be available for those meetings, so, because this is clearly a key component of making this program work.

The medical panel has also been asked to move fairly quickly ahead on recommendations since this is a matter of regulatory concern. And we will anticipate that you will communicate with Dr. Seligman directly with copies to other people, the other people on the Committee with regard to your progress on these issues.

I will, in addition to drafting the letter that we just discussed, I will work with Paul in working out some kind of information transfer mechanism that

keeps everybody happy here and follow up on that, and we will keep you alerted as to how that is resolved as well.

I think that only leaves the question of the upcoming meeting and I leave to the subcommittees continued meeting either by phone or physical meetings which you actually hold, which people attend, and I would ask that you work with staff on scheduling and making arrangements for those subcommittee meetings.

That leaves the full Committee meeting. How am I doing on time? That leaves the full Committee meeting as where and when and the question of whether we, in conjunction with the next full Committee meeting that we would attempt to hold a public hearing. My suggestion is that we meet preferably in the first half of April. But, certainly no later as a full Committee then the end of April. And I don't know that we can do this with calendars right now in the next four minutes. I would and especially since I already have conflicting dates of availability from the people who aren't here. I am kind of at a loss as to the actual scheduling of this. I will tell you that I personally, because it is April, I am unavailable in April on Mondays and Wednesdays until the week of the, I guess for the first two weeks, first three weeks of April, I am unavailable on Mondays and Wednesdays.

MS. WELCH: It is Easter, Passover, Spring Break.

MS. SPIELER: Well, our spring break isn't then actually. So, spring break is -- But, yeah, I would, Judy won't don't you, Judy, Judy, yes, you are going to have to deal with this. I apologize, but get, send out calendars or get calendar information in and then you and I will try to figure out the dates on which the most people will be available. If we are going to do this as a public meeting, it seems to me it may have to be a two day meeting, again, in which we have a half day of public hearing and I would suggest that as we work on this, I would strongly urge all the Committee members to be there for that, but it is not absolutely essential that 100 percent of the Committee members be available for the public meeting. I would personally like to be there and so, I am going to try to make sure that that happens.

Rick?

MR. BLEA: Is this, our next meeting does it necessarily have to be here in D.C?

MS. SPIELER: No, that is what I am saying, I am opening up the question as to, if we are going to have a public hearing, or a public meeting where

people can come and talk to us about their concerns, then clearly it has to be a site. And several different sites have been suggested.

Go ahead, Rick.

MR. BLEA: Well, I would just, I don't know what sites have been suggested, but I would invite everybody to come to Los Alamos, and I know Vikki would invite everybody to come to Oak Ridge. I think we have a fair amount of population in both places that would be more than willing to come to the public meeting, whatever the discretion of the Committee is, that is fine.

MS. SPIELER: I wonder if one of the variables we shouldn't consider in this, well, there are two variables that I think need to be considered and we may have to ultimately leave this somewhat to a discussion and staff input.

One is whether people can get in and out of wherever it is we pick, so that we can accommodate people's schedules. I hate to say that, but since people on this Committee are volunteering their time, it becomes somewhat difficult for some people to work on that.

The second thing and probably the more important thing is balancing those sites where people, where public meetings have been held before and where people are well organized and we know that there would be a lot of people coming, against the possibility of going some places where people have had less opportunity to voice their concerns and where it would be appropriate to hear from those people and maybe they would feel more included in the concerns of the program.

And I don't know exactly how to balance all of these concerns. If the Committee feels that we should go forward with doing this, which is what I believe we discussed at our last meeting, the question is are you willing to leave that to discussion subsequent to this meeting or do we need to resolve what site we go to today?

MS. HATFIELD: I think we can leave that to discussion at a later date. I would certainly like to see us go to Oak Ridge, but I mean, realizing that that is my point of view and not the whole Committee's. But, I think we could get a lot of useful information wherever we go. I think it would be most useful to the Committee to really firsthand what is going on and what is going to happen. But, I think it is something we can put forth to the staff of DOE and to the full Committee to find out where we go.

MS. SPIELER: Yeah. I actually think this may not be the only time we go out on the road. And so, the issue of did we get, you know, did we get to Oak Ridge or did we get to Los Alamos, because this is the beginning of the process and there may be six months into it or nine months into it, we may want to hear from people about how they think the process is working, which they can't tell us now. And so, I would leave open the possibility that subsequent meetings of this Committee would also be held at places outside of Washington, D.C. But, not all of the meetings, because I think that we need staff present and we can't put that entire burden on the staff. So, we will just have to work this out as we go along.

DR. SELIGMAN: My only request is just from a logistic standpoint, that we try to make a decision sometime next week about not only the dates, but the location because we are going to have to, you know, find a space and meeting room. And in some measure may determine exactly where we, our next meeting is held.

MS. SPIELER: Yes, obviously. And I think we, over the next week or two we need to nail all of this down. And I am certainly available to do that over the next couple weeks.

Is there anything further that absolutely, that has to be resolved today?

MS. WELCH: On the record, I think Emily has done a great job of herding this crows.

(Applause.)

MS. SPIELER: Thank you.

MS. WELCH: And so, thank you very much.

DR. SELIGMAN: Just so that you know, the telephone interview form that you requested, is out here on the table.

MS. SPIELER: And let me just say, I assume if we have ideas about these things, your staff is open to them whether it is individually or as a committee?

DR. SELIGMAN: Sure.

MS. SPIELER: Okay.

DR. SELIGMAN: We are always happy to look at them.

MS. SPIELER: Because I actually have something I wanted to ask
you about.

DR. SELIGMAN: Okay.

(Whereupon, at 12:01 p.m., the meeting was concluded.)